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WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

BOSTON, MA

- WHEN:** April 16, at 9:00 a.m.
- WHERE:** Thomas P. O'Neill Federal Building Auditorium,
10 Causeway Street,
Boston, MA.
- RESERVATIONS:** Call the Boston Federal Information Center, 617-565-8129

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-89-202]

United States Standards for Grades of Canned Tomatoes; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: AMS is correcting errors in references to tables in § 52.5168(a), (b), and (c) of the revised U.S. grade standards for canned tomatoes which appeared in the *Federal Register* on March 14, 1990 (55 FR 9412). Please note an additional correction is published elsewhere in the **CORRECTIONS** section of this issue.

EFFECTIVE DATE: April 13, 1990.

FOR FURTHER INFORMATION CONTACT: Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-6247.

SUPPLEMENTARY INFORMATION: AMS has revised the U.S. grade standards for canned tomatoes and published the standards in the *Federal Register* on March 14, 1990 (55 FR 9412). Errors in a reference to tables in the new standards are described briefly below and are corrected by this notice.

The following corrections are made in the U.S. Standards for Grades of Canned Tomatoes published in the *Federal Register* on March 14, 1990 (55 FR 9412).

PART 52—[CORRECTED]

§ 52.5168 [Corrected]

1. Beginning on page 9414, third column § 52.5168(a), (b), and (c), lines 3

and 4 of each paragraph, reference to "Tables I, II, and III of § 52.5170," should be changed to read "Tables I, II, III, IV, and V of § 52.5170,".

Dated: April 3, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90-7980 Filed 4-5-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regulation 712]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 712 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 350,000 cartons during the period from April 8, 1990, through April 14, 1990. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 712 (7 CFR part 910) is effective for the period from April 8, 1990, through April 14, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act,

and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989-90. The Committee met publicly on April 3, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is steady.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information

and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.712 is added to read as follows:

Note.—This section will not appear in the Code of Federal Regulations.

§ 910.712 Lemon Regulation 712.

The quantity of lemons grown in California and Arizona which may be handled during the period from April 8, 1990, through April 14, 1990, is established at 350,000 cartons.

Dated: April 4, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-8111 Filed 4-5-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 946

[Docket No. FV-90-132]

Irish Potatoes Grown in Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 946 for the 1990-91 fiscal period. Authorization of this budget permits the State of Washington Potato Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1990 through June 30, 1991.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and

Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC, 20090-6456, telephone 202-447-2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 113 and Marketing Order No. 946, both as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of Washington potatoes under this marketing order, and approximately 475 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of Washington potato producers and handlers may be classified as small entities.

Notice of this action was given in the form of a proposed rule published March 14, 1990, in the *Federal Register* (55 FR 9460). Interested persons had until March 26, 1990, in which to file written comments. No comments were received.

The budget of expenses for the 1990-91 fiscal year was prepared by the committee, the agency responsible for local administration of the order, and submitted to the Secretary of Agriculture for approval. The members of the committee are producers and handlers of Washington potatoes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are in a position to formulate an appropriate budget. The

budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Washington potatoes. Because that rate is applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so the committee will have funds to pay its expenses.

The committee met February 7, 1990, and unanimously recommended a budget for the 1990-91 fiscal year of \$35,000 and an assessment rate of \$0.004 per hundredweight of potatoes. Both the budget and assessment rate are the same as last year. Slight increases in committee and salary expenses are offset by like decreases in compensation and miscellaneous expenses. All other budget categories remain the same.

The assessment rate of \$0.004 per hundredweight, when applied to anticipated fresh market shipments of 7 million hundredweight, will yield \$28,000 in assessment revenue. This, along with \$7,000 from the committee's authorized reserve, will be adequate for budgeted expenses. The projected reserve for the end of the current fiscal period is \$19,400, which will be carried over into the next fiscal year. This amount is within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters, including the recommendation of the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 946.243 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 946.243 Expenses and assessment rate.

Expenses of \$35,000 by the State of Washington Potato Committee are authorized, and an assessment rate of \$0.004 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1991. Unexpended funds may be carried over as a reserve.

Dated: April 3, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-7978 Filed 4-5-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 959

[Docket No. FV-90-131]

South Texas Onions; Increase in Assessment Rate

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This final rule increases the assessment rate under Marketing Order No. 959 for the 1989-90 fiscal period. Reduced shipments and therefore lower assessment income is anticipated due to adverse weather conditions during the growing season. Funds to administer the program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1989, through July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-447-2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 143 and Order No. 959, both as amended [7 CFR part 959], regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act

of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of South Texas onions under this marketing order, and approximately 80 onion producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of South Texas onion handlers and producers may be classified as small entities.

A proposed rule was published in the March 5, 1990, *Federal Register* [55 FR 7717], allowing interested persons until March 26, 1990, to file written comments. None were filed.

The budget of expenses for the 1989-90 fiscal year was prepared by the South Texas Onion Committee (committee), the agency responsible for local administration of the order and submitted to the Secretary of Agriculture for approval. The members of the committee are handlers and producers of South Texas onions. They are familiar with the committee's needs and with the costs for goods and services in their local area and are in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate is applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expected

expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so the committee will have funds to pay its expenses.

During Christmas week, 1989, the Lower Rio Grande Valley of Texas experienced a freeze that caused extensive damage to the Valley's citrus and vegetable crops. Substantial damage was done to the onion crop, which had been planted during the preceding October and November and had already emerged. The committee held a subcommittee meeting on February 2, 1990, to evaluate damage to the crop and to revise its production estimate. As a result of subcommittee discussion, the estimate of fresh onion shipments for the season was reduced from 6,075,000 50-pound containers to approximately 4,500,000 containers.

On February 8, 1990, the committee conducted a telephone vote and unanimously recommended that the assessment rate established for the 1989-90 fiscal year be increased from 5½ cents to 7 cents per 50-pound container or equivalent quantity. The committee intends to reduce expenditures for promotion by \$30,000 and research by \$20,000, for a total reduction of \$50,000. This will reduce total anticipated expenses from \$376,966 to \$326,966. However, reduced onion shipments of 4.5 million containers will yield only \$247,500 in assessment income, a shortfall of \$79,466. Increasing the assessment rate to 7 cents per container will yield \$315,000 in assessment income; the additional \$11,966 will be drawn from the committee's authorized reserve funds.

While this final rule imposes some additional costs on handlers, the costs are in the form of uniform assessments. Some of the additional costs may be passed on to producers. However these costs will be offset by the benefits derived from the operation of the order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the *Federal Register*

because (1) the South Texas onion shipping season has begun and all assessable onions must be assessed at the same rate, and using the increased rate at the initial billing of as many shipments as possible will tend to simplify committee billing procedures, (2) the industry was advised of the proposal published in the *Federal Register* which invited comments, and (3) there are no requirements on handlers that cannot be completed by the effective date of this rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 959.230 is revised to read as follows:

§ 959.230 Expenses and assessment rate.

Expenses of \$376,966 by the South Texas Onion Committee are authorized and an assessment rate of \$0.07 per 50-pound container or equivalent quantity of assessable onions is established for the fiscal period ending July 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: April 3, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-7977 Filed 4-5-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 989

[FV-90-133IFR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for the 1989-90 Crop Year for Natural (Sun-Dried) Seedless and Other Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on the establishment of final free and reserve percentages for Natural (sun-dried) Seedless and Other Seedless raisins from California's 1989 raisin crop

production. These percentages are intended to stabilize supplies and prices and to help counter the destabilizing effects of the burdensome oversupply situation facing the raisin industry. This action was unanimously recommended by the Raisin Administrative Committee (Committee), which is responsible for local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California.

EFFECTIVE DATE: Interim final rule effective April 6, 1990. Comments which are received by May 7, 1990, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 382-1754.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

The order prescribes procedures for computing trade demands and preliminary and final percentages that establish the amount of raisins that can be marketed throughout the season. The regulations apply to all handlers of California raisins. Raisins in the free percentage category may be shipped immediately to any market, while reserve raisins must be held by handlers in a reserve pool for the account of the Committee. Under the order, reserve raisins may be: Sold at a later date by the Committee to handlers for free use; used in diversion programs; exported to authorized countries; carried over as a hedge against a short crop the following year; or disposed of in other outlets noncompetitive with those for free percentage raisins. While this action may restrict the amount of raisins that enter domestic markets, final free and reserve percentages are intended to lessen the impact of the oversupply situation facing the industry and promote stronger marketing conditions, thus stabilizing prices and supplies and improving grower returns. In addition to the quantity of raisins released under the preliminary percentages and to be released under the final percentages, the order specifies methods to make available additional raisins to handlers by authorizing sales of reserve pool raisins for use as free tonnage raisins under "10 plus 10" offers, or for export sales and school lunch programs.

The U.S. Department of Agriculture's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" specifies that 110 percent of recent years' sales be made available to primary markets each season before recommendations for volume regulation are approved. This requirement is met by the establishment of these final percentages which release 100 percent

of the computed trade demands and the additional release of reserve raisins to handlers under "10 plus 10" offers. The "10 plus 10" offers are two simultaneous offers of reserve pool raisins which are made available to handlers each season. For each such offer, a quantity of raisins equal to 10 percent of the prior year's shipments is made available for free use.

Pursuant to § 989.54(a) of the order, the Committee met on August 15, 1989, to review shipment and inventory data, and other matters relating to the supplies of raisins of all varietal types. The Committee computed, using a formula prescribed in that paragraph, a trade demand for each varietal type for which a free tonnage percentage might be recommended. The trade demand is 90 percent of the prior year's shipments of free tonnage and reserve tonnage raisins sold for free use for each varietal type into all market outlets, adjusted by subtracting the carryin of each varietal type on August 1 of the current crop year and by adding to the trade demand the desirable carryout for each varietal type at the end of that crop year. The order prescribes that the desirable carryout for each varietal type shall be the shipments of free percentage raisins from the prior year during the months of August, September, and October. The inventory adjustments (difference between the carryins and desirable carryouts) used for computing the trade demands were 14,807 tons for Natural (sun-dried) Seedless raisins and 1,584 tons for Other Seedless raisins.

In accordance with these provisions, the Committee computed and announced trade demands of 289,573 tons for Natural (sun-dried) Seedless raisins and -999 tons for Other Seedless raisins. The trade demand for Other Seedless raisins was negative because of the large inventory remaining from the 1988-89 crop.

As required under § 989.54(b) of the order, the Committee met on October 5, 1989, and computed and announced preliminary crop estimates and preliminary free and reserve percentages for Natural (sun-dried) Seedless and Other Seedless raisins which released 65 percent of the trade demands since field prices had not been established. The preliminary crop estimates and preliminary free and reserve percentages were as follows: 353,902 tons, and 53 percent free and 47 percent reserve for Natural (sun-dried) Seedless raisins; and 2,712 tons, and 0 percent free and 100 percent reserve for Other Seedless raisins. On November 3, 1989, field prices were established; therefore, the preliminary percentages

were revised to release 85 percent of the trade demands, in accordance with § 989.54(b). The revised preliminary crop estimates and revised preliminary free and reserve percentages were as follows: 353,902 tons, and 70 percent free and 30 percent reserve for Natural (sun-dried) Seedless raisins; and 2,712 tons, and 0 percent free and 100 percent reserve for Other Seedless raisins. Since the trade demand for Other Seedless raisins was negative, all of this year's Other Seedless raisins were allocated to the reserve. Handlers operate under the preliminary percentages until the industry is able to obtain a more accurate estimate of raisin production for that year. There are no volume percentage restrictions on other varietal types of California raisins because the available supplies are expected to meet the anticipated demand.

Pursuant to § 989.54(c), the Committee may adopt interim free and reserve percentages. Interim percentages may release less than the computed trade demand for each varietal type for which preliminary percentages have been computed and announced. Interim percentages for Natural (sun-dried) Seedless raisins of 72.75 percent free and 27.25 percent reserve were computed and announced on February 15, 1990. The interim percentages for Natural (sun-dried) Seedless raisins will release 99.40 percent of the computed trade demand.

Under § 989.54(d) of the order, the Committee is required to recommend to the Secretary, no later than February 15 of each crop year, final free and reserve percentages which, when applied to the final production estimate of a varietal type, will tend to release the full trade demand for any varietal type for which preliminary or interim percentages have been computed and announced. By that time, the Committee has more information available, including the final crop estimate and other information, on which to base the determination of final free and reserve percentages.

The Committee's final estimate of 1989-90 production of Natural (sun-dried) Seedless raisins totaled 395,616 tons (which is 41,714 tons more than the preliminary estimate). Dividing the computed trade demand of 289,573 tons by the final estimate of production results in a final free percentage of 73.20 percent. The Committee rounded that free percentage to 73 percent which results in a final reserve percentage of 27 percent. Final percentages for Other Seedless raisins will remain at 0 percent free and 100 percent reserve. In addition, all of the available raisins (about 2,700 tons) in the 1989-90 Other

Seedless reserve pool have been sold to handlers for government purchases, as provided in § 989.67(b)(2) of the order.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, including the Committee's recommendations, and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because:

(1) The relevant provisions of this part require that the percentages designated herein for the 1989-90 crop year apply to all Natural (sun-dried) Seedless and Other Seedless raisins acquired from the beginning of that crop year;

(2) Handlers are currently marketing 1989-90 crop raisins of the Natural (sun-dried) Seedless varietal type and this action must be taken promptly to achieve its purpose of making the full trade demand quantity computed by the Committee available to handlers; and

(3) Handlers are aware of this action, which was recommended by the Committee at an open meeting, and need no additional time to comply with these percentages.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 989.242 is added to subpart—Supplementary Regulations to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 989.242 Final free and reserve percentages for the 1989-90 crop year.

The final percentages of standard Natural (sun-dried) Seedless and Other Seedless raisins acquired by handlers during the crop year beginning on August 1, 1989, which shall be free tonnage and reserve tonnage, respectively, are designated as follows:

	Free percent- age	Reserve percent- age
Natural (sun-dried) seedless.....	73	27
Other seedless.....	0	100

Dated: April 3, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-7979 Filed 4-5-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1032

[DA-90-011]

Milk in the Southern Illinois-Eastern Missouri Marketing Area; Order Suspending Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain provisions of the Southern Illinois-Eastern Missouri Federal milk marketing order for the months of March and April 1990. The action removes the limits on the amount of milk that may be moved directly from dairy farms to nonpool plants and still be priced under the order. The action was requested by Morning Glory Farms (AMPI), a cooperative association that represents producers who supply the market. As AMPI contends, the action is necessary to give market suppliers of raw milk sufficient time to adjust to significant marketing changes. Specifically, AMPI indicates that the sale of a major fluid milk processing plant has resulted in a realignment of raw milk supplies. Absent a suspension, a significant quantity of milk that was previously associated with the market will not be eligible for pricing under the order and would result in an economic hardship for producers who have historically supplied fluid milk needs.

EFFECTIVE DATE: April 6, 1990.

FOR FURTHER INFORMATION CONTACT: John F. Borovics, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South

Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2089.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued March 1, 1990, published March 6, 1990 (55 FR 7904).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed under Executive Order 12291 and Department Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southern Illinois-Eastern Missouri marketing area.

Notice of proposed rulemaking was published in the *Federal Register* on March 6, 1990 (55 FR 7904) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. No comments opposing the action were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of March and April 1990 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1032.13(d)(2), the words "and January through April".

Statement of Consideration

This action suspends certain provisions of the order for the months of March and April 1990. The action removes the limits on the amount of milk that can be shipped directly from farms to nonpool plants and still be priced under the order.

The order limits the proportion of milk receipts that cooperative associations can move directly from farms to nonpool plants. The amount of milk moved in this manner (diverted) that is in excess of the specified limits is not eligible to be priced under the order. Such

diversions are limited to 35 percent of a cooperative's receipts of milk during each of the months of September-November and January-April, and 45 percent during December and August. There are no diversion limits during May-July. This action removes the diversion limitations during March and April 1990.

The action was requested by Morning Glory Farms, a region of Associated Milk Producers, Inc. (AMPI), a cooperative association that represents producers who supply the market. As AMPI contends, the action is necessary because of recent changes that have taken place in the market. Specifically, AMPI indicates that a major fluid milk handler ceased processing in the market and that such action has resulted in a realignment of raw milk supplies. Because of the shift in supplies of raw milk, a significant proportion of milk that was previously associated with the market will not be eligible for pricing under the order. Consequently, a suspension action is necessary to prevent the economic hardship to producers that would result from the loss of a market and the pricing of their milk under the order. A suspension to remove the diversion limitations will provide market suppliers of raw milk with sufficient time to adjust to the marketing changes.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area by providing market suppliers of raw milk with sufficient time to adjust to marketing changes;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments in opposition to this action were received.

Therefore, good cause exists for making this order effective upon publication in the *Federal Register*.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

It is therefore ordered, That the following provisions in § 1032.13(d)(2) of the Southern Illinois-Eastern Missouri order are hereby suspended for the months of March and April 1990.

PART 1032—MILK IN SOUTHERN ILLINOIS-EASTERN MISSOURI MARKETING AREA

1. The authority citation for 7 CFR part 1032 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1032.13 [Suspended in part]

2. In § 1032.13(d)(2), the words "and January through April" are hereby suspended for the months of March and April 1990.

Signed at Washington, DC, on April 3, 1990.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 90-8046 Filed 4-5-90; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Parts 1940 and 1942

Community Facility Loans and Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The Farmers Home Administration (FmHA) amends its Community Facility Loan and grant regulations to implement title V of the Disaster Assistance Act of 1989 (Pub.L. 101-82). Public Law 101-82 establishes a new grant program to assist rural communities that have had a significant decline in quantity or quality in their drinking water supply or their existing water system needs emergency repairs. The grant program will assist the residents of rural communities in obtaining adequate quantities of drinking water that meet the requirements of the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*). The intended effect of this action is to develop a new regulation for the emergency community assistance grants authorized by the law.

DATES: April 6, 1990.

Written comments must be received on or before June 5, 1990.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, USDA, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Jerry W. Cooper, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South

Agriculture Building, Room 6328, Washington, DC 20250, telephone: (202) 382-9589.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than \$100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local government agencies; or geographic regions. Furthermore, there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to provide better service to rural communities.

This program is listed in the Catalog of Federal Domestic Assistance under number 10.440, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V; 48 FR 29112, June 24, 1983; 49 FR 2267, May 31, 1984; 50 FR 14088, April 10, 1985).

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Programs." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for proposed rulemaking since the change is necessary to comply with Public Law 101-82, which requires publishing of an interim rule and any delay would be contrary to the public interest.

This action implements title V of Public Law 101-82 which requires that grants be provided to assist residents of rural areas and small communities in securing adequate quantities of safe drinking water. Grants made under this program will only be made to remedy an acute shortage of quality water or a

significant decline in the quantity or quality of water that is available. Grant applicants must be a public or private nonprofit entity and, in the case of a grant made because of a decline in water supplies, the applicant must demonstrate to FmHA that the decline occurred within two years of the date the application was filed for a grant.

List of Subjects

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs - Housing and community development, Loan programs - Agriculture, Rural areas.

7 CFR Part 1942

Community development, Community facilities, Loan programs - Housing and community development, Loan security, Rural areas, Waste treatment and disposal - Domestic, Water supply - Domestic.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Section 1940.590 is amended by adding paragraph (f) to read as follows:

§ 1940.590 Community and business programs appropriations not allocated by State.

* * * * *

(f) *Emergency Community Water Assistance Grants.* Control of funds will be retained in the National Office and allocated on an project case basis. Requests for funds will be made to the Director, Water and Waste Disposal Division.

PART 1942—ASSOCIATIONS

3. The authority citation for part 1942 continues to read as follows:

Authority: U.S.C. 1989; 7 CFR 2.23; 16 U.S.C. 1005; 7 CFR 2.70.

4. Subpart K of part 1942, consisting of §§ 1942.501 through 1942.550, is added to read as follows:

Subpart K—Emergency Community Water Assistance Grants

Sec.

- 1942.501 General.
- 1942.502 [Reserved]
- 1942.503 Objective.
- 1942.504 Definitions.
- 1942.505 [Reserved]
- 1942.506 Eligibility.
- 1942.507 Project priority.
- 1942.508 [Reserved]
- 1942.509 Uses.
- 1942.510 Restrictions.
- 1942.511 Maximum grants.
- 1942.512 [Reserved]
- 1942.513 Set-aside.
- 1942.514 Other considerations.
- 1942.515–1942.520 [Reserved]
- 1942.521 Application processing.
- 1942.522 Planning development and procurement.
- 1942.523 Grant closing and disbursement of funds.
- 1942.524–1942.530 [Reserved]
- 1942.531 Performing development.
- 1942.532 Grant cancellation.
- 1942.533 [Reserved]
- 1942.534 Grant servicing.
- 1942.535 Subsequent grants.
- 1942.536 [Reserved]
- 1942.537 Forms, guides, and attachments.
- 1942.538–1942.549 [Reserved]
- 1942.550 OMB control number.

Exhibits to Subpart K

Exhibit A—Emergency Community Water Assistance Grant Program Project Selection Criteria

Exhibit B—Transmittal Memorandum

Subpart K—Emergency Community Water Assistance Grants

§ 1942.501 General.

(a) This subpart outlines Farmers Home Administration (FmHA) policies and procedures for making Emergency Community Water Assistance Grants authorized under section 306A of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1926(a)), as amended.

(b) FmHA officials will maintain liaison with officials of other Federal, State, regional and local development agencies to coordinate related programs to achieve rural development objectives.

(c) FmHA officials shall cooperate with appropriate State agencies in making grants that support State strategies for rural area development.

(d) Funds allocated for use in accordance with this subpart are also to be considered for use by Indian tribes within the State regardless of whether State development strategies include Indian reservations within the State's boundaries. Indians residing on such reservations must have an equal opportunity along with other rural residents to participate in the benefits of this program. This includes equal

application of outreach activities of FmHA County and District Offices.

(e) Federal statutes provide for extending FmHA financial programs without regard to race, color, religion, sex, national origin, marital status, age, or physical/mental handicap (provided the participant possesses the capacity to enter into legal contracts).

§ 1942.502 [Reserved]

§ 1942.503 Objective.

The objective of the Emergency Community Water Assistance Grant Program is to assist the residents of rural areas that have experienced a significant decline in quantity or quality of water to obtain adequate quantities of water that meet the standards set by the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*) (SDWA).

§ 1942.504 Definitions.

(a) Rural areas—Includes any area in any city or town with a population not in excess of 15,000 inhabitants according to the most recent decennial census of the United States. They can be located in any of the fifty States, the Commonwealth of Puerto Rico, the Western Pacific Territories, Marshall Islands, Federated States of Micronesia, Republic of Palau, and the U.S. Virgin Islands.

(b) Significant decline in quantity—A significant decline in the quantity is caused by a disruption of the potable water supply by an emergency such as a drought. The disruption in quantity of potable water prevents the present source or delivery system from supplying the present needs of rural residents. This would not include a decline in excess water capacity.

(c) Significant decline in quality—A significant decline in quality of potable water is where the present community source or delivery system does not meet, as a result of an emergency, the current SDWA requirements. For a private source or delivery system a significant decline in quality is where the water is no longer potable as a result of an emergency.

§ 1942.505 [Reserved]

§ 1942.506 Eligibility.

(a) Grants may be made to public bodies and private nonprofit corporations serving rural areas. Public bodies include counties, cities, townships, incorporated towns and villages, boroughs, authorities, districts, and other political subdivisions of a State. Public bodies also includes Indian tribes on Federal and State reservations and other federally recognized Indian Tribal groups in rural areas.

(b) In the case of grants made to alleviate a significant decline in quantity or quality of water available from the water supplies of rural residents, the applicant must demonstrate that the decline occurred within two years of the date the application was filed with FmHA. This would not apply to grants made for repairs, partial replacement, or significant maintenance on an established water system.

§ 1942.507 Project priority.

The following paragraphs indicate items and conditions which must be considered in selecting applications for further development. When ranking eligible applications for consideration for limited funds, FmHA officials must consider the priority items met by each application and the degree to which those priorities are met.

(a) *Applications.* The application and supporting information submitted with it will be used to determine the proposed project's priority for available funds.

(b) *State Office review.* All applications will be reviewed and scored for funding priority using Exhibit A of this subpart (available in any FmHA office). The State Director will request funds from the National Office, Attention: Director, Water and Waste Disposal Division (WWD), using Exhibits A and B of this subpart (available in any FmHA office). If an application cannot be funded, the State Director will be notified. Eligible applicants that cannot be funded should be advised by the District Director that funds are not available.

(c) *National Office review.* Each year all funding requests will be reviewed by the National Office starting November 1 and will continue as long as funds are available except for the first year in which funds are made available for this grant program. A review of funding requests the first year will start 30 days after funds are made available. Projects selected for funding will be considered based on the priority criteria and available funds. Projects must compete on a national basis for available funds, and the National Office will allocate funds to FmHA State offices on a project by project basis.

(d) *Selection priorities.* The priorities described below will be used by the State Director to rate applications and by the Director of WWD to select projects for funding. Points will be distributed as indicated in paragraphs (1) through (5) of this section and will be considered in selecting projects for funding. A copy of Exhibits 1 and 2 (available in any FmHA office) used to

rate applications, should be placed in the case file for future reference.

(1) **Population:** The proposed project will serve an area with a rural population:

- (i) Not in excess of 5,000—30 points.
- (ii) More than 5,000 and not in excess of 10,000—15 points.
- (iii) More than 10,000 and not in excess of 15,000—0 points.

(2) **Income:** The median household income of population to be served by the proposed project is:

- (i) Not in excess of 70% of the statewide nonmetropolitan median household income—30 points.
- (ii) More than 70% and not in excess of 80% of the statewide nonmetropolitan median household income—20 points.
- (iii) More than 80% and not in excess of 90% of the statewide nonmetropolitan median household income—10 points.
- (iv) Over 90% of the statewide nonmetropolitan median household income—0 points.

(3) The proposed project will correct a:

- (i) Significant decline in the quality of water available from private individually owned wells or other individual sources of water—30 points.
 - (ii) Significant decline in the quality of water available from private individually owned wells or other individual sources of water—30 points.
- (4) Grants made in accordance with § 1942.511 (b) of this subpart to assist an established water system remedy an acute shortage of quality water or correct a significant decline in the quantity or quality of water that is available—10 points.

(5) **Discretionary:** In certain cases the FmHA Administrator may assign up to 30 points for items such as geographic distribution of funds, rural residents hauling water, severe contamination levels, etc.

§ 1942.508 [Reserved]

§ 1942.509 Uses.

Grant funds may be used for the following purposes:

- (a) Waterline extensions from existing systems.
- (b) Construction of new waterlines.
- (c) Repairs to an existing system.
- (d) Significant maintenance to an existing system.
- (e) Construction of new wells, reservoirs, transmission lines, treatment plants, and other sources of water.
- (f) Equipment replacement.
- (g) Connection and/or tap fees.
- (h) Pay costs that were incurred within six months of the date an application was filed with FmHA to correct an emergency situation that

would have been eligible for funding under this subpart.

(i) Any other appropriate purpose such as legal fees, engineering fees, recording costs, environmental impact analyses, archaeological surveys, possible salvage or other mitigation measures, planning, establishing or acquiring rights associated with developing sources of, treating, storing, or distributing water.

(j) Assist rural water systems to comply with the requirements of the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) (FWPCA) or the SDWA when such failure to comply is directly related to a recent decline in quality of potable water. This would not apply to changes in the requirements of FWPCA or SDWA.

§ 1942.510 Restrictions.

- (a) Grant funds may not be used to:
 - (1) Assist any city or town with a population in excess of 15,000 inhabitants according to the most recent decennial census of the United States.
 - (2) Assist a rural area that has a median household income in excess of the statewide nonmetropolitan median household income according to the most recent decennial census of the United States.
 - (3) Finance facilities which are not modest in size, design, and cost.
 - (4) Pay loan or grant finder's fees.
 - (5) Pay any annual recurring costs that are considered to be operational expenses.
 - (6) Pay rental for the use of equipment or machinery owned by the rural community.
 - (7) Purchase existing systems.
 - (8) Refinance existing indebtedness, except for short-term debt incurred in accordance with § 1942.509 (h) of this subpart.
 - (9) Make reimbursement for projects developed with other grant funds.
- (b) Nothing in paragraphs (a)(1) or (a)(2) of this section shall preclude rural areas from submitting joint proposals for assistance under this subpart. Each entity applying for financial assistance under this subpart to fund their share of a joint project will be considered individually.

§ 1942.511 Maximum grants.

- (a) Grants made to alleviate a significant decline in quantity or quality of water available from the water supplies in rural areas that occurred within two years of filing an application with FmHA cannot exceed \$500,000.
- (b) Grants for repairs, partial replacement, or significant maintenance on an established system cannot exceed \$75,000.

(c) Grants under this subpart, subject to paragraphs (a) and (b) of this section, shall be made for 100 percent of eligible project costs.

§ 1942.512 [Reserved]

§ 1942.513 Set-aside.

At least 50 percent of the funds appropriated for this grant program shall be allocated to rural areas with populations not in excess of 5,000 inhabitants according to the most recent decennial census of the United States. Also, at least 70 percent of all grants made under this grant program shall be for projects funded in accordance with § 1942.511(a) of this subpart.

§ 1942.514 Other considerations.

(a) **Civil rights compliance requirements.** All grants made under this subpart are subject to title VI of the Civil Rights Act of 1964 as outlined in subpart E of part 1901 of this chapter.

(b) **Environmental requirements.** The requirements of subpart G of part 1940 of this chapter apply to grants made under this subpart.

(c) **Uniform Relocation and Real Property Acquisition Policies Act.** All projects must comply with the requirements set forth in title 7, subtitle A, part 21 of the Code of Federal Regulations.

(d) **Flood and mudslide hazard area precautions.** If the project is located in a flood or mudslide area, then flood or mudslide insurance must be provided as required in subpart A of part 1806 of this chapter (FmHA Instruction 426.2).

(e) **Governmentwide debarment and suspension (nonprocurement) and requirements for drug-free work place.** All projects must comply with the requirements set forth in the U.S. Department of Agriculture regulations 7 CFR part 3017 and FmHA Instruction 1940-M (available in any FmHA office).

(f) **Intergovernmental review.** All projects funded under this subpart are subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. These requirements are set forth in U.S. Department of Agriculture regulations 7 CFR part 3015, subpart V and FmHA Instruction 1940-J (available in any FmHA office).

§§ 1942.515-1942.250 [Reserved]

§ 1942.521 Application processing.

(a) To the extent possible, an application under this subpart will be approved or disapproved within 60 days of the date that a complete application and all related material is submitted to FmHA.

(b) The material submitted with the application should include the Preliminary Engineer Report, population and median household income of the area to be served, description of project, and nature of emergency that caused the problem(s) being addressed by the project. The documentation must clearly show that the applicant has had a significant decline in the quantity and/or quality of potable water or an acute shortage of potable water and the proposed project will eliminate the problem. For projects to be funded in accordance with § 1942.511(a) of this subpart, evidence must be furnished that a significant decline in quantity or quality occurred within two years of filing the application with FmHA.

(c) The District Director should assist the applicant in application assembly and processing.

(d) Appropriate application review and approval procedures outlined in § 1942.2 of subpart A of part 1942 of this chapter will be followed. The preapplication state is eliminated in processing an application under this subpart.

(e) Each application for assistance will be carefully reviewed in accordance with the priorities established in § 1942.507 of this subpart. A priority rating will be assigned to each application by the State Director.

(f) When the National Office has allocated funds to the State for a project, applicable provisions outlined in §§ 1942.5 of subpart A and 1942.366 of subpart H of part 1942 of this chapter will be followed in preparation of the grant docket. This would include development of an operating budget showing that the applicant can meet all its obligations and provide the intended services.

(g) When favorable action will not be taken on an application, the applicant will be notified in writing by the District Director of the reasons why the request was not favorably considered. Notification to the applicant will state that a review of this decision by FmHA may be requested by the applicant in accordance with subpart B of part 1900 of this chapter.

(h) FmHA State Directors are authorized to approve grants made in accordance with this subpart A of part 1901 of this chapter.

(i) Funds will be obligated and approval announcement made in accordance with the provisions of § 1942.5(d) and subpart A of part 1942 of this chapter.

§ 1942.522 Planning development and procurement.

Planning development and procurement for grants made under this subpart will be in accordance with §§ 1942.9 and 1942.18 of subpart A of part 1942 of this chapter. A certification should be obtained from the State agency or the Environmental Protection Agency if the State does not have primacy, stating that the proposed improvements will be in compliance with requirements of the SDWA.

§ 1942.523 Grant closing and disbursement of funds.

(a) Grants will be closed in accordance with instructions received from the Office of the General Counsel (OGC).

(b) Form FmHA 1942-31, "Association Water or Sewer System Grant Agreement," will be executed by all applicants. District Directors and State Directors are authorized to execute the agreement on behalf of FmHA.

(c) The grant will be considered closed on the date Form FmHA 1942-31 is signed by FmHA. The Finance Office will be notified of the grant closing date. FmHA will retain the original of the Grant Agreement.

(d) FmHA's policy is not to disburse grant funds from the Treasury until they are actually needed by the applicant. Grant funds will be disbursed by using multiple advances in accordance with § 1942.17(p)(2) of subpart A of part 1942 of this chapter.

§§ 1942.524-1942.530 [Reserved]

§ 1942.531 Performing development.

(a) Applicable provisions of §§ 1942.17(p) and 1942.18(o) of subpart A of part 1942 of this chapter will be followed in performing development for grants made under this subpart.

(b) After filing an application in accordance with § 1942.521 of this subpart and when immediate action is necessary, the State Director may concur in an applicant's request to proceed with construction before funds are obligated provided the requirements of subpart G of part 1940 of this chapter are complied with. The applicant must be advised in writing that:

(1) Any authorization to proceed or any concurrence in bid awards, contract concurrence, or other project development activity, is not a commitment by FmHA to provide grant funds under this subpart.

(2) FmHA is not liable for any debt incurred by the applicant in the event that funds are not provided under this subpart.

§ 1942.532 Grant cancellation.

The District Director or State Director may prepare and execute Form FmHA 1940-10, "Cancellation of U.S. Treasury Check and/or Obligation," in accordance with the Forms Manual Insert. If the docket has been forwarded to OGC, that office should receive a copy of Form FmHA 1940-10. The applicant's attorney and engineer may be provided a copy of Form FmHA 1940-10. A copy should also be sent to the National Office, Attention: Water and Waste Disposal Division.

§ 1942.533 [Reserved]

§ 1942.534 Grant servicing.

(a) Grants will be serviced in accordance with § 1951.215 of subpart E of part 1951 of this chapter and subpart O of part 1951 of this chapter.

(b) The grantee will provide an audit report in accordance with § 1942.17(g) of subpart A of part 1942 of this chapter.

§ 1942.535 Subsequent grants.

Subsequent grants will be processed in accordance with the requirements set forth in this subpart. The initial and subsequent grants made to complete a previously approved project must comply with the maximum grant requirements set forth in § 1942.511 of this subpart.

§ 1942.536 [Reserved]

§ 1942.537 Forms, Guides, and Attachments.

Exhibit C of subpart H of part 1942 of this chapter, Exhibits A and B of this subpart, and Forms referenced (all available in any FmHA office) are for use in administering grants made under this subpart.

§§ 1942.538-1942.549 [Reserved]

§ 1942.550 OMB control number.

The reporting and recordkeeping requirements contained in this instruction has been approved by the Office of Management and Budget and assigned OMB control number 0575-0074. Public reporting burden for this collection of information is estimated to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, DC 20250; and to the Office

of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Exhibit A—Emergency Community Water Assistance Grant Program Project Selection Criteria

Exhibit B—Transmittal Memorandum

Note: The exhibits are not published in the Code of Federal Regulations. They are available in any FmHA office.

Dated: January 12, 1990.

Neal Sox Johnson,
Acting Administrator, Farmers Home Administration.

[FR Doc. 90-7683 Filed 4-5-90; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS Number: 1116-88]

Powers and Duties of Service Officers; Availability of Service Records; Immigration: Adjudication of Application or Petition

CFR Correction

§ 103.2 [Corrected]

In title 8 of the Code of Federal Regulations, revised as of January 1, 1990, on page 46, § 103.2(b)(3) was printed twice, the second paragraph (b)(3), should be removed.

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-245-AD; Amdt. 39-6569]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42 series airplanes, which currently requires repetitive inspections of the aileron control tab hinge pins, repair if necessary, and modification of the hinge pins on certain airplanes. Those actions were necessary to prevent hinge pin migration, which

could lead to excessive aileron forces and reduced controllability of the airplane. This amendment requires the installation of a previously optional modification, consisting of new hinge pins and stop plates, which terminates the need for the currently required repetitive inspections. Additionally, this proposal adds additional airplanes to the applicability of the rule.

EFFECTIVE DATE: May 14, 1990.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to certain Aerospatiale Model ATR42 series airplanes, which requires the installation of a previously optional modification, consisting of new hinge pins and stop plates, which terminates the need for the currently required repetitive inspections, was published in the Federal Register on December 19, 1989 (54 FR 51888).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supported the rule. Since the issuance of the Notice, Aerospatiale has issued Revisions 3 and 4 of Service Bulletin ATR42-57-0030, dated October 25, 1989, and January 10, 1990, respectively. These revisions contain additional clarifying information. The final rule has been revised to incorporate revisions 2, 3, and 4 of the service bulletins as applicable service information for procedures relating to the installation of new hinge pins and stop plates.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any

operator, nor increase the scope of the AD.

It is estimated that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The required modification kit will be supplied by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$10,600.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6304 (54 FR 34498; August 21, 1989), AD 89-18-03, as follows:

Aerospatiale: Applies to Model ATR42 series airplanes, Serial Numbers 003 through 147, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent migration of the aileron control tab hinge pins, accomplish the following:

A. Within 7 days after June 12, 1989 (the effective date of AD 89-12-05, Amendment 39-6229), for airplanes Serial Numbers 003 through 068, modify the aileron control tab hinge pins in accordance with Part B of Aerospatiale Service Bulletin ATR42-57-0019, Revision 1, dated June 7, 1989.

B. Within 7 days after June 12, 1989 (the effective date of AD 89-12-05, Amendment 39-6229), for airplanes Serial Numbers 003 through 135, perform an inspection of the aileron control tab hinge pins in accordance with Part B of Aerospatiale Service Bulletin ATR42-57-0028, Revision 2, dated July 25, 1989. If the inspection reveals that the end knuckle is not peened, prior to further flight, modify the aileron control tab hinge pins in accordance with the service bulletin.

C. Within 7 days after September 5, 1989 (the effective date of AD 89-18-03, Amendment 39-6304), for airplanes Serial Numbers 003 through 147, unless accomplished within the last 50 hours time-in-service, inspect all aileron control tab hinges to determine if the hinge pin has visibly migrated out of its housing. If the inspection reveals that a hinge pin has migrated, prior to further flight, push the hinge pin back into its housing. Repeat the inspection for hinge pin migration, and the associated repair, if necessary, at intervals not to exceed 50 hours time-in-service.

D. Within 60 days after the effective date of this amendment, for airplanes Serial Numbers 003 through 147, install new hinge pins and stop plates, in accordance with Service Bulletin ATR42-57-0030, Revision 2, dated September 18, 1989; or Revision 3, dated September 18, 1989; or Revision 4, dated January 10, 1990. This modification constitutes terminating action for the repetitive inspections required by paragraph C., above.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane

Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment amends Amendment 39-6304, AD 89-18-03.

This amendment becomes effective May 14, 1990.

Issued in Seattle, Washington, on March 28, 1990.

Darrell M. Pederson,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 90-7945 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-169-AD; Amdt. 39-6571]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which requires relocating the aft equipment/lavatory/galley ventilation fan wire bundles against the frame at station 1540 where they are less vulnerable to damage. This amendment is prompted by a report of charred insulation blankets aft of station 1540. The charred insulation was a result of the wire bundles arcing and burning. This condition, if not corrected, could result in a fire behind the aft cargo compartment wall.

EFFECTIVE DATE: May 14, 1990.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest L. Keller, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1937. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 767 series airplanes,

which requires relocating the aft equipment/lavatory/galley ventilation fan wire bundles against the frame at station 1540 where they are less vulnerable to damage, was published in the *Federal Register* on September 20, 1989 (54 FR 38688).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supported the rule.

The second commenter responded through the Air Transport Association (ATA) of America with two objections to the proposed rule:

The commenter's first objection pertained to the statement in the proposed rule that two operators had experienced wire bundle failures and subsequent fires in the same area. The commenter suggested there had only been one such incident and requested clarification. The FAA issued the NPRM based on reports from the manufacturer of two such incidents. Upon further investigation, Boeing verified to the FAA that both reports were of the same incident. Based on this investigation the FAA concurs with the commenter's contention that only one operator reported finding charred insulation blankets behind the aft cargo bay bulkhead at station 1540. However, this concurrence does not affect in any way the FAA's determination that an unsafe condition is likely to exist or develop on airplanes of this type design.

The commenter's second objection was that the proposed requirements of the rule would not have prevented an incident such as the one reported. This contention is based on review of photographs taken of the area in which the incident occurred. The commenter believes that the photographs show the damage occurred in an area other than where maintenance workers would have stepped on the wires. The FAA does not concur. The wire bundle involved in the incident is routed on stand-off clamps. Stepping on the bundle could cause excessive tension along the wire bundle and resulting damage can occur anywhere the stretched bundle passes through a standoff clamp. There are such clamps in the area where the damage occurred. The damage could also have occurred from numerous other maintenance related activities. The FAA rejects the contention that such an incident occurred spontaneously. Further, due to the extent of the damage involved and the location of the wire bundle in an area without fire detection or extinguishing capability, it is the position of the FAA that the wire bundle

in question must be rerouted to a less vulnerable location.

Since issuance of the NPRM, Boeing has issued Alert Service Bulletin 767-21A0074, Revision 1, dated January 25, 1990. This revision clarifies, corrects, and provides additional information concerning the specified procedures. Airplanes modified in accordance with the previous release of this service bulletin do not require additional work. The final rule has been revised to include this revision.

After careful review of the available data, including comments noted above, the FAA has determined that air safety and the public interest require adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 231 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 106 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The parts required by this proposed AD may be furnished or fabricated from the operators' existing stock or purchased from industry sources; therefore, parts cost is estimated to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$16,960.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation that has been prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 767 series airplanes as listed in Boeing Alert Service Bulletin 767-21A0074, dated July 13, 1989, certificated in any category. Compliance is required within the next 12 months after the effective date of this AD, unless previously accomplished.

To prevent inadvertent damage to aft equipment/lavatory/galley ventilation fan wire bundles and the potential for a fire behind the aft cargo compartment wall, accomplish the following:

A. Reroute the aft equipment/lavatory/galley ventilation fan wire bundles along the frame assembly at station 1540 in accordance with Boeing Alert Service Bulletin 767-21A0074, dated July 13, 1989, or Revision 1, dated January 25, 1990.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 14, 1990.

Issued in Seattle, Washington, on March 30, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-7946 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-234-AD; Amdt. 39-6568]

Airworthiness Directives; British Aerospace Model BAe 146-100A, 146-200A, and 146-300A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146-100A, 146-200A, and 146-300A series airplanes, which requires modification to the wing flap electronic control unit (ECU) and installation of a warning placard on the ECU. This amendment is prompted by the identification of a sequence of events, involving possible crew actions or environmental occurrences and subsequent hardware failure, that could result in in-flight failure of the flap ECU and could create an asymmetric flap condition. This condition, if not corrected, could result in loss of wing flap asymmetry protection, which would adversely affect airplane controllability.

EFFECTIVE DATE: May 14, 1990.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing Address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include a new airworthiness directive, applicable to

certain British Aerospace Model BAe 146-100A, 146-200A, and 146-300A series airplanes, which requires modification of the wing flap electronic control unit (ECU) and installation of a placard on the ECU, was published in the *Federal Register* on December 15, 1989 (54 FR 51414).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requested that the proposed compliance period be extended to one year because the time required for retrofit is determined by the ability of a third party. Presumably the commenter contended that the repair station can only accomplish between two to sixteen units per month. Another commenter indicated that vendor turnaround time currently exceeds 100 days for this modification. The FAA does not concur with the request to extend the compliance time. As a result of the comments received, the FAA contacted the airplane manufacturer, who subsequently contacted Dowty Rotol, to confirm that sufficient parts would be available within the proposed 180-day compliance time. The manufacturer and Dowty Rotol are working toward a July 31, 1990, compliance date currently specified in British Aerospace (BAe) Service Bulletin 27-95-70420A, and, at this time, that date appears to be achievable for BAe, Dowty Rotol, and U.S. operators. However, in the event that modification of the wing flap ECU does become a problem for an individual operator because of parts availability obstacles, the FAA may consider any proposed adjustment of the compliance time in accordance with paragraph C. of this rule.

After careful review of available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 61 airplanes of U.S. registry will be affected by this AD, that it will take approximately two and one-half manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The required parts will be supplied to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$6,100.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels

of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) [Revised Pub. L. 97-449, January 12, 1983]; and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe 146-100A, Serial Numbers E1002 and subsequent; Model BAe 146-200A, Serial Numbers E2012 and subsequent; and Model BAe 146-300A, Serial Numbers E3118 and subsequent; certificated in any category. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent loss of wing flap asymmetry protection and reduced airplane controllability, accomplish the following:

A. Install an improved wing flap electronic control unit (ECU) in accordance with British Aerospace Service Bulletin 27-95-70420A, dated April 27, 1989.

Note: The British Aerospace Service Bulletin references Dowty Rotol Service Bulletin 146-27-75 for additional instructions.

B. Install a warning placard on the front face of the ECU, in accordance with British Aerospace Service Bulletin 27-95-70420A, dated April 27, 1989.

The warning placard states:
"WARNING—This equipment must not be removed or re-racked in flight."

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective May 14, 1990.

Issued in Seattle, Washington, on March 28, 1990.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 90-7947 Filed 4-5-90; 8:45 am]

BILLING CODE 4810-13-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218-AB26

Air Contaminants

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; partial stay of effective date for two substances.

SUMMARY: OSHA reduced exposure limits for 375 air contaminants on January 19, 1989 at 54 FR 2332. A stay of the new limits for nitroglycerin and ethylene glycol dinitrate is granted to the explosives industry until April 27, 1990.

DATES: These actions take effect on April 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N-3647,

Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: On January 19, 1989 at 54 FR 2332 OSHA issued a final standard setting new or more protective exposure limits for 375 substances. The new limits are to be achieved with any reasonable combination of controls including engineering controls and respirators by September 1, 1989, and with a preference for engineering controls by December 31, 1992.

The Institute of Makers of Explosives petitioned OSHA to administratively stay the new exposure limits for nitroglycerin and ethylene glycol dinitrate for the explosives industry. OSHA stayed the September 1, 1989 start-up date of the Final Rule Limits column (new) exposure limits for those substances pending settlement negotiations until April 1, 1990. See 54 FR 36765, September 5, 1989; 54 FR 41244, October 6, 1989; and 54 FR 50372, December 6, 1989; and 55 FR 3723, February 5, 1990.

Settlement negotiations are continuing. Accordingly OSHA is extending the stay of the September 1, 1989 start-up date of the new exposure limits for nitroglycerin and ethylene glycol dinitrate for the explosives industry until April 27, 1990.

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), section 4 of the Administrative Procedure Act, 5 U.S.C. 553, 29 CFR part 1911 and Secretary of Labor Order 1-90 (55 FR 9033).

Signed at Washington, DC this 30th day of March, 1990.

Gerard F. Scannell,
Assistant Secretary.

PART 1910—[AMENDED]

1. The general authority for part 1910, subpart Z, and the authority for § 1910.1000 are revised to read as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736) or 1-90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z-1-A, which have identical limits listed in the Transitional Limits columns of

Table Z-1-A, Table Z-2 or Table Z-3. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, the Transitional Limits columns of Table Z-1-A, Table Z-2 and Table Z-3 also issued under 5 U.S.C. 553, § 1910.1000, the Transitional limits columns of Table Z-1-A, Table Z-2 and Table Z-3 not issued under 29 CFR part 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

§ 1910.1000 [Amended]

2. Section 1910.1000, Table Z-1-A is amended by revising the Note at the end of the Table to read as follows:

Note: Pursuant to administrative stays effective September 1, 1989 and published in the Federal Register on September 5, 1989, and extended in part by notices published in the Federal Register on October 6, 1989, December 6, 1989, February 5, 1990 and on April 6, 1990 the September 1, 1989 start-up specified in 29 CFR 1910.1000(f)(2)(i) is stayed as follows:

Until April 27, 1990 for nitroglycerin and ethylene glycol dinitrate in the explosives industry; until October 1, 1989 for perchloroethylene in the drycleaning industry; until September 1, 1990 for the acetone TWA for certain "doffers" in the cellulose acetate fiber industry; and until the decision on the merits of the Eleventh Circuit Court of Appeals in the case of Courtaulds Fibers, Inc. v. U.S. Department of Labor, No. 89-7073 and consolidated cases, for the Ceiling for carbon monoxide for blast furnace operations, vessel blowing at basic oxygen furnaces and sinter plants in the steel industry (SIC 33). OSHA will publish in the Federal Register notice of the termination of the carbon monoxide stay.

[FR Doc. 90-8002 Filed 4-5-90; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD8-90-02]

Drawbridge Operation Regulations; Lake Pontchartrain, LA

AGENCY: U.S. Coast Guard, DOT.

ACTION: Final rule—revocation.

SUMMARY: This amendment revokes the regulations for the Southern Railway Systems south drawspan on Lake Pontchartrain, in Orleans and St. Tammany Parishes, Louisiana, because the drawspan has been replaced with a fixed span. Notice and public procedure have been omitted from this action due to the conversion of the span.

EFFECTIVE DATE: This regulation becomes effective May 7, 1990.

FOR FURTHER INFORMATION CONTACT:

Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely revokes regulations that are now meaningless because they pertain to a drawbridge span that no longer exists. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory evaluation is unnecessary. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, and because this action will not have a significant impact on a substantial number of small entities, this rulemaking is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Drafting Information

The drafters of this regulation revocation are Mr. John Wachter, project officer, and Commander J. A. Unzicker, project attorney.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.467(a) is revised to read as follows:

§ 117.467 Lake Pontchartrain.

(a) The south draw of the S11 bridge near New Orleans shall open on signal if at least 48 hours notice is given. In case of emergency, the draw shall open within 12 hours and shall be kept in condition for immediate operation until the emergency is over.

Dated: March 22, 1990.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 90-7943 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD2 89-03]

**Drawbridge Operation Regulations;
Ouachita River, AR****AGENCY:** Coast Guard, DOT.**ACTION:** Final rule.

SUMMARY: At the request of the St. Louis Southwestern Railway Company the Coast Guard is changing regulations governing the St. Louis Southwestern Railroad Bridge, Mile 338.8, presently listed as located at Mile 331.4, near Camden, Arkansas to provide that the draw need not be opened for the passage of vessels. This change is being made because no requests have been made to open the draw for more than 20 years. This action will relieve the bridge owner of the burden of maintaining the machinery and of having a person available to open the draw, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on May 7, 1990.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, 314-425-4607.

SUPPLEMENTARY INFORMATION: On November 16, 1989, the Coast Guard published proposed rules (54 FR 47686) concerning this amendment. The Commander, Second Coast Guard District, also published the proposal as a Public Notice dated November 21, 1989. In each notice interested persons were given until December 18, 1989 to submit comments.

Drafting Information

The drafters of these regulations are Wanda G. Renshaw, project officer, and LT M. A. Suire, project attorney.

Discussion of Comments

No comments were received as a result of publication in the *Federal Register*. One state and two Federal agencies responded to the Public Notice. The Arkansas Department of Finance and Administration, the Federal Emergency Management Agency, and the U.S. Department of Interior, Fish and Wildlife Service, had no objection to the proposed change.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full

regulatory evaluation is unnecessary. This swing span drawbridge is presently required to open on signal if at least 48 hours notice is given. The Coast Guard has confirmed that the bridge is located at Mile 338.8, about 1.8 miles above the northern limits of the Corps of Engineers' federally authorized navigation project for channel maintenance. The advance notice requirement notwithstanding, the bridge owner has received no requests to open the bridge for over twenty years. The change will relieve the bridge owner of the burden of maintaining machinery and personnel for requests which don't materialize, and will not impact the reasonable needs of navigation. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment and Certification

This action has been reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with 2.b.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Determination is available for review on the docket.

Federalism Implications Assessment

This action has been analyzed under the principles and criteria in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant preparation of a federal assessment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.01(g).

2. Section 117.133 is revised to read as follows:

**PART 117—DRAWBRIDGE
OPERATION REGULATIONS****§ 117.133 Ouachita River.**

(a) The draw of the Chicago, Rock Island and Pacific Railroad Bridge, Mile 291.7 at Calion, shall open on signal if at least 24 hours notice is given, except as follows:

(1) Any vessel that requires the opening of the draw and that intends to return within 24 hours shall inform the drawtender of the probable time of return. The draw shall open for the returning vessel without further notice.

(2) When the pool stage is above 21 feet on the upper gauge at Lock and Dam No. 8, the Commander, Second Coast Guard District, notifies the bridge owner, who is then given one day in which to place a drawtender in constant attendance and open the draw on signal.

(b) The draw of the St. Louis Southwestern Railroad Bridge, Mile 338.8 near Camden, need not be open for the passage of vessels.

Dated: March 27, 1990.

M.J. Moynihan,

Captain, U.S. Coast Guard, Acting
Commander Second Coast Guard District.

[FR Doc. 90-7944 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-14-M

**DEPARTMENT OF VETERANS
AFFAIRS****38 CFR Part 21**

RIN 2900-AC61

Extension of Time Limits for Claims

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its rules to provide increased protection of a veteran's rights to secure benefits and services under the vocational rehabilitation program. These regulatory changes will help assure that the veteran is not adversely affected if VA fails to take the actions required by the VA procedures for informing veterans of the time limits during which information in support of claims must be provided.

EFFECTIVE DATE: These amendments are effective May 7, 1990.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington DC 20420, (202)-233-6496.

SUPPLEMENTARY INFORMATION: At pages 40871 and 40872 of the *Federal Register* of October 3, 1989, the Department of Veterans Affairs (VA) published proposed regulations to extend the period allowed for filing information in support of a claim if VA failed to inform the veteran of these time limits.

Interested persons were given 30 days in which to submit their comments, suggestions or objections to the proposed regulatory amendments. Since no comments, suggestions or objections to the proposed regulatory amendments were received, this rule is adopted as final.

These final regulatory amendments do not meet the criteria for a major rule as that term is defined by Executive Order 12291. These regulatory amendments will not have a \$100 million annual effect on the economy, will not cause a major increase in costs or prices and will not have any other significant adverse effects on the economy.

The Secretary of Veterans' Affairs has certified that these regulatory amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these regulatory amendments, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This certification can be made because these regulatory amendments only affect the eligibility of certain veterans with service-connected disabilities for benefits and assistance under the vocational rehabilitation program. These regulatory amendments will have no significant economic impact on small entities, i.e., small business, small private and nonprofit organizations and small governmental jurisdictions.

The Catalog of Federal Domestic Assistance number for the program affected by these regulatory amendments is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 8, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

38 CFR part 21, Vocational Rehabilitation and Education, is amended as follows:

PART 38—VOCATIONAL REHABILITATION AND EDUCATION

1. In § 21.32, paragraph (b) and the cross-reference at the end of the section are revised and paragraph (c) is added to read as follows:

§ 21.32 Time limit.

(b) *Failure to furnish claim or notice of time limit.* The failure of VA to furnish a claimant:

(1) Any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim is not a basis for adjusting the periods allowed for these actions;

(2) Appropriate notice of time limits within which evidence must be submitted to perfect a claim shall result in an adjustment of the period during which the time limit runs. The period during which the time limit runs shall be determined in accordance with paragraph (c) of this section. As to appeals see § 19.129 of this chapter. (Authority: (38 U.S.C. 3013))

(c) *Adjustment of time limit.* (1) In computing the time limit for any action required of a claimant or beneficiary to perfect the types of claims described in paragraph (a) of this section, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.

(2) The period during which the veteran must provide information necessary to perfect his or her claim does not begin to run until the veteran has been notified of this requirement for submission of information. The date of the letter of notification informing the veteran of the action required and the time limit for accomplishing the action shall be "The first day of the specified period" referred to in paragraph (c)(1) of this section.

(Authority: U.S.C. 3001, 3013, 201(c))

Cross-Reference: Due Process. See § 3.103.

2. In § 21.322, paragraph (c)(1)(i)(B), (ii)(B), (iii), (2)(i)(B) and (C) are revised to read as follows:

§ 21.322 Commencing dates of subsistence allowance.

(c) *Increases for dependents.*

(1) * * *

(i) * * *

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period of submission of the evidence is adjusted in accordance with § 21.32 of this part.

(ii) * * *

(B) VA receives any necessary evidence within 1 year of the date VA

requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part;

(iii) The effective date of the increase will be the date VA receives all necessary evidence if that evidence is received more than one year from the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(2) * * *

(i) * * *

(B) Date notice is received of the dependents' existence if evidence is received within 1 year from the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(C) Date VA receives evidence of the dependent's existence if this date is more than one year after VA requested this evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of the time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

* * *

[FR Doc. 90-7962 Filed 4-5-90; 8:45 am]

BILLING CODE 8320-01-M

POSTAL SERVICE

39 CFR Part 776

Amendments to Procedures for Floodplain Management and Protection of Wetlands; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: The Postal Service is correcting a paragraph heading in the facility planning procedures for floodplains and wetlands, which appeared in the Federal Register on March 21, 1990, (55 FR 10452).

FOR FURTHER INFORMATION CONTACT: Edward Wandelt, (202) 268-3135.

§ 776.5 [Corrected]

The heading of paragraph (a) in § 776.5, on page 10455, column 1, is correctly revised to read as follows:
 "(a) Construction in Floodplain/Wetland."

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 90-8045 Filed 4-5-90; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL-034; FRL-3724-4]

Approval and Promulgation of Implementation Plans, Florida: Biological Waste Incineration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On August 16, 1989, Florida submitted several amendments to Florida Administrative Code, chapter 17-2 concerning Biological Waste Incineration. On November 8, Florida submitted two revisions to the August 16, 1989, submittal. The submittals included new definitions, specific source emission limits, test procedures and continuous emission monitoring requirements as they related to Biological Waste Incinerators. EPA is approving these regulations for biological waste incineration in Florida.

DATES: This action will be effective on June 5, 1990 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. Such notice may be submitted to Douglas Neeley at the EPA Regional office address listed below. If the effective date is delayed, timely notice will be published in the *Federal Register*.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at:

Environmental Protection Agency,
 Region IV, Air Programs Branch, 345
 Courtland Street, NE., Atlanta,
 Georgia 30365.

Public Information Reference Unit,
 Library Systems Branch,
 Environmental Protection Agency, 401
 M Street, SW., Washington, DC 20460.
 Florida Department of Environmental
 Regulation, Bureau of Air Quality
 Management, Twin Towers Office
 Building, 2600 Blair Stone Road,
 Tallahassee, Florida 32301.

FOR FURTHER INFORMATION CONTACT:
 Douglas Neeley of the EPA Region IV
 Air Programs Branch at the address
 given above, telephone (404) 347-2864 or
 (FTS) 257-2864.

SUPPLEMENTARY INFORMATION: During the 1988 Florida legislative session, Senate Bill 1192 (Solid Waste Bill) was passed which required the state to address onsite and offsite incineration of biohazardous and biological waste. To implement this statute the Florida Department of Environmental Regulation (FDER) promulgated regulations to control emissions from biological waste incinerators. The new regulations set time and temperature requirements, established emission limits for particulate matter and hydrochloric acid, established minimum training requirements and set monitoring and testing requirements.

The August 16 submittal contained the following revisions:

1. 17-2.100—Definition

Definitions for "Biohazardous Waste", "Biological Waste", "Biological Waste Incineration Facility", "Sharps", "Solid Waste", and "Special Waste" have been established to clarify the rule language in accordance with the intent of the biological waste incineration regulation. To include the new definitions in this section, the definitions have been renumbered in several places.

2. 17-2.600—Specific Source Emission Limiting Standards

Revisions to the Specific Source Emission Limiting Standard for incinerators have been made to incorporate the specific standards for biological waste incinerators. The revisions include the establishment of particulate and hydrogen chloride emission standards for biological incinerators and the establishment of requirements to ensure that these incinerators are well designed and operated.

3. 17-2.700—Stationary Point Source Emissions Test Procedures

Revisions have been made to establish specific testing requirements for biological waste incinerators.

4. 17-2.710—Continuous Monitoring Requirements

Revisions have been made to establish specific continuous monitoring requirements for biological waste incinerators.

The November 8 submittal revised definitions for "Biohazardous Waste" and "Sharps" to make the FDER rules consistent with the provisions of the

Department of Health and Rehabilitative Service's Rule 10D-104, F.A.C.

The particulate matter emission limits established for biological waste incinerators are more stringent than that for incinerators in general. Therefore the approval of these regulations will not jeopardize attainment or maintenance of the National Ambient Air Quality Standards.

Action: EPA approves the above revised SIP regulations submitted by the Florida Department of Environmental Regulation on August 16 and November 8, 1989.

The public is advised that this action will be effective 60 days from today. However, if notice is received within 30 days that someone wishes to make adverse or critical comments, this action will be withdrawn and two subsequent notices will be published prior to the effective date. One notice will withdraw final action and another will begin a new rulemaking by announcing a proposed action and establishing a comment period.

This action has been classified as Table 3 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 1990. This action may not be challenged later in proceeding to enforce its requirements. (see 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter, Intergovernmental relations, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 8, 1990.

Joe R. Franzmathes,
Acting Regional Administrator.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642

Subpart K—Florida

2. Section 52.520 is amended by adding paragraph (c)(68) to read as follows:

§ 52.520 Identification of plan.

(c) * * *

(68) Revisions which were submitted on August 16 and November 8, 1989, concerning Biological Waste Incinerators

(i) *Incorporation by reference.* (A) Revisions to Florida Administrative Code, Chapter 17-2 which became state effective on August 30, 1989.

- 17-2.100 Definitions: 27, 28, 181, and 182
- 17.2.600 Specific Source Emission Limiting Standards: (1)(a)1., (1)(b) Introductory paragraph, (1)(c) Introductory paragraph, (1)(d)
- 17.2.700 Stationary Point Source Emissions Test Procedures:
- Table 700-1: 17-2.600(1)(a)-(e)
- 17.2.710 Continuous Monitoring Requirements: paragraph (5)

(B) Revisions to Florida Administrative Code, chapter 17-2 which became state effective on November 9, 1989.

- 17-2.100 Definitions: 26 and 175

(ii) *Additional material.* (A) Letter of August 16, 1989, from the Florida Department of Environmental Regulation submitting the SIP revision.

(B) Letter of November 8, 1989, from the Florida Department of Environmental Regulation submitting the amendments to the August 16, 1989, submittal.

[FR Doc. 90-7908 Filed 4-5-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3752-3; Docket No. AM075MD]

Disapproval of Revisions to the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On May 24, 1989, EPA published a Federal Register notice proposing to disapprove a revision to the Maryland State Implementation Plan (SIP) affecting the General Motors Assembly Plant in Baltimore, Maryland (GM-Baltimore) and three satellite

plants located in Metropolitan Baltimore. The revision would have allowed GM-Baltimore and those satellite plants to comply with less stringent standards for emissions of volatile organic compounds (VOCs) than the currently approved Reasonably Available Control Technology (RACT) standards. Metropolitan Baltimore is an ozone nonattainment area which did not attain the ozone standard by the statutory date of December 31, 1987. VOCs are regulated as a precursor of ozone pollution.

DATES: This action is effective May 7, 1990.

ADDRESSES: Copies of the applicable documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107.
Maryland Air Management Administration, Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia H. Stahl, (215) 597-9337, at the Region III address above. The commercial and FTS phone numbers are the same.

SUPPLEMENTARY INFORMATION: On May 24, 1989, EPA published a rulemaking notice proposing to disapprove revisions to the Maryland SIP regulation, COMAR 10.18.21.03, affecting GM-Baltimore and three satellite plants located in Metropolitan Baltimore (54 FR 22453). The revisions regarding surface coating standards for automobile and light-duty truck assembly plants and associated supplier industries would have allowed the affected sources to comply with less stringent standards for emissions of VOC than the currently approved RACT standards.

In response to the proposed rulemaking notice, comments were received, during the public comment period, from the Maryland Air Management Administration and from General Motors Corporation (GM). The following summarizes the comments received and gives the EPA response.

Comment #1: The State of Maryland disagrees with the conclusion that existing RACT regulations require a source to comply with the coating standards only by using paint that meets the nominal standard in the regulation. Maryland's assertion is that the use of improvements in transfer efficiency to attain RACT is implicitly permitted by the Maryland SIP.

In particular, the State of Maryland commented that COMAR 10.18.21.02 allows the State to consider alternative

methods of demonstrating compliance, provided the reduction achieved by such alternatives is equivalent to that achieved by complying with RACT requirements.

Response: The regulations pertaining to automobile and light-duty truck surface coating approved in the Maryland SIP list coating standards for VOC content which must be met. There is no specific provision for the use of transfer efficiency calculations as a compliance option. Further, there is no test method for establishing that such transfer efficiency improvements are equivalent to RACT in the federally-approved Maryland SIP.

EPA has traditionally interpreted provisions allowing alternative methodology, such as COMAR 10.18.21.02, as mandating a sequential two-step SIP revision process. First, the State adopts a revision and then EPA must approve such a State-proposed SIP revision before it has effect as a regulation. This process of promulgation by a State and approval by EPA applies to "alternative control plans" such as the use of improvements in transfer efficiency. Use of such improvements is discussed in the Control Techniques Guidelines (CTG) for surface coating of miscellaneous metal parts:

No alternative control plan is effective until it is submitted to and approved by the Administrator of the United States Environmental Protection Agency as a revision of the State Implementation Plan pursuant to section 110(a)(3)(A) of the Clean Air Act.

EPA has permitted the adoption of SIP provisions that allow a State to impose alternative emission limits without receiving subsequent EPA approval, but such provisions are approvable only if they provide "mechanical procedures" for "replicable decisions" and do not permit "choices by the State that are not similarly circumscribed and mechanical in operation." 45 FR 77459, 77461 (November 24, 1980). In this context, "replicability" in State decision making under the provision means "a high likelihood that two decision-makers applying the rule to given circumstances would reach the same conclusion." 47 FR 15076, 15084 (April 7, 1982). This replicability requirement is necessary for EPA to have reasonable assurance that alternative approaches approved under the rule will achieve emission standards at least as stringent as the original requirements.

Therefore, Maryland's approval under COMAR 10.18.21.02 of improved transfer efficiency as an alternative method of attaining compliance with the SIP requirement, does not, in itself,

authorize the use of such techniques in lieu of the preexisting standard contained in the federally approved and enforceable SIP. An equivalency provision demonstration would have to be approved by EPA through a SIP revision process.

Even if the Maryland SIP was deemed to allow the use of improved transfer efficiency as an alternative compliance method, any appropriate transfer efficiency alternative would have to assure equivalent compliance with the preexisting coating standard. The proposed SIP revision, which is the subject of this Notice, does not transfer efficiency or include any method of determining whether the use of higher solvent coatings with improved transfer efficiency is equivalent to the present standard. Therefore, the use of improved transfer efficiency as an alternative to the present VOC content standard is not permitted under the present SIP or the proposed revision.

Comment #2: The State of Maryland and General Motors commented that EPA has already approved the use of transfer efficiency (TE) improvements in Maryland in a February 26, 1985 Federal Register notice (50 FR 7772).

Response: The February 26, 1985 Federal Register notice pertains to a final rulemaking action approving plans for compliance (PFCs) for several companies, one of which was GM-Baltimore. The February 1985 Federal Register notice approved the PFC for GM-Baltimore as a revision to the Maryland SIP. The PFC included the approval of several compliance date extensions for coatings used at the GM-Baltimore plant. In the Notice, as part of the discussion of the PFC for GM-Baltimore, the issue of compliance feasibility was raised. The discussion extended to material not in the SIP revision and included mention of several options that were theoretically available to the Company in order to attain compliance. One of the options mentioned was the use of improved transfer efficiency. The Company was not bound by any specific option mentioned in that notice and none of the options mentioned in the notice is contained in the PFC. That notice itself is not a regulation and it included material for purposes of discussion which is not in the approved SIP. It is erroneous to conclude that mentioning the possible use of improved transfer efficiency as a method of determining compliance, in that Notice, would automatically permit the source to use this as a compliance method. As discussed in the response to Comment #1, the use of improvements in transfer

efficiency is outside the scope of this rulemaking action.

Comment #3: The State of Maryland believes that coatings not subject to the automobile and light-duty truck regulations are not necessarily subject to the miscellaneous metal parts and products regulation or the generic VOC regulation.

Response: Coatings which are not subject to the automobile and light-duty truck regulations are evaluated to determine whether any of them meet the applicability criteria of any other regulation. In the Maryland SIP, the miscellaneous metal parts and products regulation applies to any metal surface coating operation which emits more than 20 pounds (9.1 kg) per day of VOC and which is not specifically covered by COMAR 10.18.21.03-.10. The generic VOC regulation applies to VOC sources which emit more than 200 lbs/day if built before May 12, 1972 or 20 lbs/day if built after May 12, 1972.

Comment #4: The State of Maryland and General Motors Corporation believe that emission caps provide an overall emission reduction greater than the current regulation.

Response: The GM-Baltimore plant is subject to RACT standards. These RACT standards are expressed on an emission rate basis (pounds VOC/gal coating). EPA has determined that emission caps do not necessarily ensure that a specific source will emit less pollution than under an emission rate standard because caps limit overall production rather than minimize pollution from each unit of production. The RACT standards were approved by Maryland and EPA as part of the Maryland SIP on September 11, 1981 (46 FR 45341). These standards represent emission rates that were determined to be reasonable on a national basis. In times of lower production levels, the caps can lead to higher total pollution than would an emission rate standard. Standards which consist of only emission caps do not provide a RACT level of control for each pollution source.

Comment #5: Maryland states that it was never informed that the proposed revisions were not approvable.

Response: On August 23, 1988, EPA and Maryland staff met to discuss the proposed revisions. EPA informed Maryland that the entire package would be disapproved if it was not modified or withdrawn. EPA files contain the identities of the Maryland staff present at the meeting. In any event, there is no requirement in the Clean Air Act or the associated regulations that Maryland be

so informed prior to formal notice of EPA's proposed rulemaking action.

Comment #6: General Motors states that EPA's conclusion that the proposed revisions are less stringent than the current SIP is not based on careful analysis, supported by a technical support document; and that EPA did not perform an in-depth analysis of the SIP revision merely because the Maryland revision categorizes the coatings differently than the current SIP.

Response: In the proposed rulemaking notice, EPA stated that certain individual coating standards in the revision were more stringent than those contained in the current SIP. Other coating standards in the revised regulation, however, are less stringent than those contained in the current SIP. EPA believes that a SIP package, pertaining to the same regulation, submitted to EPA, cannot be arbitrarily divided and subjected to separate rulemaking actions without the express permission of the State. The decision in *Bethlehem Steel v. Gorsuch* 742 F. 2d 1028 (7th Circuit 1984) is relevant here. That case imposed limits on EPA's ability to approve a portion of a SIP revision and reject other portions. In general, that case provides that EPA cannot divide a proposed SIP and approve a portion of a proposed regulation and reject other portions if the effect of such partial approval is to substantially strengthen the regulation. With regard to the Maryland revision for GM, EPA determined that the package must be handled as a single inseparable entity. Since the revision contains some standards which are less stringent as well as some that are more stringent than the currently approved RACT regulations as set forth in the SIP, the SIP proposal cannot be approved.

GM's comment states that EPA's assertion in the proposed rulemaking notice for GM-Baltimore that " * * * Maryland departs from the CTG categorization which is originally adopted in the SIP and is proposing to specifically define each coating used" is evidence that the recategorization was the basis for disapproval. EPA did not use this difference in how coatings are categorized as the basis for the determination that the regulation was unapprovable. Support for a determination that a given standard is RACT, particularly those which differ from a previously approved RACT determination contained in the SIP, must accompany the State's submittal before EPA has any basis to approve it. As stated in the May 24, 1989 Federal Register notice, the material submitted with the Maryland SIP revision does not

support a finding that the new approach will constitute a control technology at least as effective as that previously approved by EPA as constituting RACT.

In preparing rulemaking notices for publication, EPA may provide a technical support document in those situations where the discussion of the issues is long and/or requires elaborate tables, equations, and supporting information. In this proposed rulemaking, the notice itself includes all of the information and analysis and therefore, a technical support document was not necessary.

Comment #7: (Related to Comment #6) General Motors commented that EPA, as an alternative to fully approving the entire package, should approve those portions of the package that are at least as stringent as the current SIP.

Response: As stated above, *Bethlehem Steel v. Gorsuch* 742 F. 2d 1028 (7th Cir. 1984) provides some guidance on the limit of EPA's ability to partition SIP packages submitted to EPA by the State. Partitioning the package, beyond mere arrangement by regulation number, must be expressly requested by the State in order for EPA to consider taking different rulemaking actions on portions of the same regulation where the effect of partitioning is to strengthen the degree of regulation. On August 14, 1989, in response to this comment by GM, EPA informed Maryland of GM's request and asked Maryland whether it wished to request that EPA approve those portions of the automobile and light-duty truck regulation which are at least as stringent as the SIP. In that letter, EPA requested that Maryland respond by September 1, 1989, otherwise, EPA would continue to treat the package as submitted and take a single rulemaking action on the package. On October 5, 1989, Maryland responded that it did not want EPA to separate the package. Therefore, EPA must continue to treat this package as one entity, even if certain portions of the package could be individually approved. Since portions of the package are not approvable, the entire package is not approvable.

Comment #8: General Motors commented that EPA's delay in acting on this SIP revision is improper and is the result of consideration of the May 26, 1988 SIP call which would not have been considered if EPA had acted earlier.

Response: Although Maryland submitted the request for the SIP revision on June 30, 1987, as late as August 23, 1988, EPA was working together with Maryland to try to arrive at a package which could be approved as part of the SIP. EPA does not view

SIP rulemaking actions frivolously and made every attempt to work toward an approvable SIP package with Maryland. It became clear in late 1988 that this package could not be approved and the proposed disapproval rulemaking notice was prepared and then published on May 24, 1989.

The facts pertaining to the May 26, 1988 SIP call for certain ozone nonattainment areas in Maryland, including Metropolitan Baltimore, were mentioned simply as part of the factual background and to ensure that the regulations being proposed for disapproval could not be misunderstood as a State or EPA action related to the SIP call. The rulemaking action to disapprove the revised regulations pertaining to automobile and light-duty truck surface coating was not, and is not, influenced by the May 26, 1988 SIP call.

Comment #9: General Motors commented that EPA has improperly commingled its enforcement and regulatory functions.

Response: While there is not statutory or controlling case law on this issue, *Bethlehem Steel v. EPA*, 638 F.2d 994, 1009-1010 (7th Cir. 1980) provides the strictest articulated judicial standard on this issue, in another circuit. That case suggests that in some situations, it may be improper for enforcement attorneys to review regulatory matters while working on an enforcement matter involving the same source(s). EPA does not believe that the rulemaking which is the subject of this Notice is subject to this standard. In any event, the EPA Region III staff level persons preparing the Notice of Violation (NOV) issued to GM-Baltimore were not the same staff level persons who reviewed the SIP revision request and prepared the proposed **Federal Register** notice. EPA's decision making process was neither improper nor inconsistent with the *Bethlehem Steel* holding.

Comment #10: The State of Maryland commented that its acceptance of improved transfer efficiency as a means of demonstrating compliance was in accordance with an October 20, 1981 **Federal Register** notice, 46 FR 51386.

Response: The October 20, 1981 Notice addressed situations where States sought the extension of compliance dates for certain automobile and light-duty truck assembly plants. That Notice states that extended compliance dates could be approved by EPA as long as they did not extend beyond 1987 for electrophoretic deposition and 1986 for topcoat operations. Any approval would have had to show that attainment and maintenance of the standard would not

be jeopardized. The Notice clearly required that these extensions be approved as SIP revisions. On its face, that Notice is inapplicable to the current Maryland SIP submission. In any event, that Notice in no way relieves Maryland of the requirement that it provide for compliance through improvement in transfer efficiency in its SIP submission, and establish the acceptability of that methodology as discussed in the responses to Comments #1 and #2.

Comment #11: The State of Maryland and General Motors commented that the New Source Performance Standard (NSPS) for automobile and light-duty truck, surface coating operations (40 CFR 60.390 Subpart MM) recognizes the use of transfer efficiency to achieve compliance. The transfer efficiency (TE) tables in 40 CFR 60.390 are available to those States whose SIPs are silent with regard to TE because 40 CFR 52.12 provides the needed test methods.

Response: The NSPS for automobile and light-duty truck surface coating operations contains TE tables which have been determined to be an inaccurate method of predicting emissions and therefore, demonstrating compliance. In a November 20, 1986 letter addressed to Dr. Fred W. Bowditch, Vice President, Technical Affairs, Motor Vehicle Manufacturers Association of the United States, Inc., from J. Craig Potter, EPA Assistant Administrator for Air and Radiation, it was explicitly and clearly stated that TE tables would not be allowed in demonstrations of compliance for best available control technology (BACT) or lowest achievable emission rate (LAER). While the discussion was limited to new source standards (BACT and LAER), EPA has determined that RACT compliance also requires a calculation of emissions and therefore TE tables also cannot be used to determine RACT compliance. On December 24, 1986, W. Ray Cunningham, Director, EPA Region III Air Management Division, informed Mr. George P. Ferreri, Director, Air Management Administration, Maryland State Department of Health and Mental Hygiene through a letter that compliance demonstrations based on TE must be submitted as SIP revisions unless the federally approved SIP includes specific language allowing TE to be used as a RACT emission control measure.

40 CFR 52.12 does not permit the use of the TE tables contained in 40 CFR 60.390 in SIPs which do not contain TE as a control measure. 40 CFR 52.12(c)(1) states:

Sources subject to plan provisions which do not specify a test procedure and source subject to provisions promulgated by the

Administrator will be tested by means of the appropriate procedures and methods prescribed in part 60 of this chapter; unless otherwise specified in this part. (Emphasis added)

This section permits the use of test procedures contained in part 60, if the SIP does not contain a test procedure. The table of TE values is not a test procedure and therefore, its use is not authorized by 40 CFR 52.12. There are no test procedures in 40 CFR 60.390 for determining TE, therefore, this subpart is not applicable to sources located in States whose SIPs do not contain TE test methods. In summary, a source may not use the TE tables contained in 40 CFR 60.390 to determine compliance with the SIP.

Comment #12: Many specific comments regarding particular coatings were made by General Motors. General Motors agreed with some of EPA's determinations of the applicable standard and disagreed with others. General Motors agreed with EPA's applicability determination for the following coatings: Stone chip (anti-chip) coating, window blackout, small parts primer (electrodeposition), final repair-clear and final repair-HS enamel, and chassis, deadener and underbody coatings. General Motors disagreed with EPA's applicability determination of the following coatings: flexible end caps and bumper, small parts, final repair primer, final repair-base, wheel HS enamel, plastic parts, and special coatings.

Response: Maryland did not provide any documentation showing why the existing standards in the Maryland SIP are not applicable to the coatings for flexible end caps and bumper, small parts, final repair-base, wheel HS enamel, plastic parts, and special coatings. EPA has determined, based on the information available, that the Maryland regulations are correctly applied to the above coatings, as indicated in Table 4 of the May 24, 1989 proposed rulemaking Notice.

GM states that the coatings on the flexible end caps and bumper and the wheel HS enamel occupy highly exposed positions, warranting the applicability of the extreme performance standard for miscellaneous metal parts. In order to consider the flexible end caps and bumper and wheel HS enamel coatings as high performance coatings, these coatings must conform to the definition of a high performance coating. As defined in the Maryland SIP, a high performance coating is "a coating designed for continuous exposure to weather; subject to zero thickness (16 gauge or greater) post-coating flexure; subject to temperatures consistently

above 201 °F (95 °C); subject to immersion in detergents, VOC, or other corrosive extremes; subject to impact loadings above 5 ft-in²; or air dried at temperatures less than 180 °F". The Maryland SIP submittal did not contain any information indicating that the flexible end caps and bumper or the wheel HS enamel coatings meet these criteria.

With regard to the small parts coating, GM states that those small parts coatings, not located in the final repair booth, should be allowed to meet the miscellaneous metal parts-high performance standard of 3.5 lbs VOC/gallon coating. As stated above, Maryland did not provide any documentation to show that the small parts coatings are high performance coatings and therefore not subject to the non-high performance miscellaneous metal parts standard of 3.0 lbs VOC/gallon coating, as EPA has determined.

EPA has determined that the repair primer coating is subject to the final repair standard of 4.8 lbs VOC/gallon coating. Final repair coatings, whether primer, base, or clear, are each subject to the final repair standard. The location of the coating application is not relevant to the determination of the applicable standard; rather, the type of coating is the basis for the determination of the applicable standard.

EPA and GM do not disagree on the categorization of the final repair-base coating; rather, GM argues that the final repair-base coating should be permitted to contain higher levels of VOC because the final repair-primer and the final repair-clear coatings have VOC contents below the EPA-approved final repair standard in the Maryland SIP of 4.8 lbs VOC/gallon coating. The RACT standards in the Maryland SIP apply to coatings on a coating-by-coating basis. Each and every coating is expected to meet the applicable standard on its own. The averaging of final repair coatings to meet the applicable standard is not permitted by the Maryland SIP.

Plastic parts coating standards are not contained in the regulations for automobile and light-duty trucks in the currently approved Maryland SIP. However, as stated in the response to Comment #3, coatings are determined to be regulated by a given regulation if they meet the applicability criteria for that regulation. Maryland's generic VOC regulation (COMAR 10.18.06.06) applies when the category specific regulations under COMAR 10.18.21 are not applicable and when the applicability criteria of COMAR 10.18.06.06 are met. COMAR 10.18.21 does not contain a regulation for the coating of plastic parts, therefore, the generic VOC

regulation is applicable for these coatings.

EPA's response to the applicable regulations for "special coatings" can be found in the response to Comment #17.

Comment #13: General Motors commented that the proposed body prime (electrodeposition) standard was the same as that in the approved SIP and additionally imposes an emissions cap, making the overall standard more stringent.

Response: See discussion for Comment #3 on emission caps and Comment #7 for issues related to the inseparability of the Maryland SIP package.

Comment #14: General Motors commented that the original topcoat standard was based on waterborne enamels and that EPA has recognized the need for alternative coatings by developing an alternative method with the Motor Vehicle Manufacturers Association (MVMA) through "equivalency" using a "Protocol" method. General Motors states that equivalency allows the use of coatings with higher VOC content but with concomitant higher transfer efficiency and other emission-saving elements compared to spraying water-borne enamel.

Response: See responses to Comments #1 and #2 above for a discussion of the use of improvements in transfer efficiency. The "Protocol" method to which GM refers is available for use if the SIP specifically mentions transfer efficiency and contains the test method to determine it. The Maryland SIP does not incorporate any provision for the use of improvements in transfer efficiency, nor does it incorporate the "Protocol". EPA has stated that Maryland must change its SIP to allow for the use of transfer efficiency and incorporate an approved test method if transfer efficiency credits will be used to demonstrate compliance. Maryland may, at any time, submit such a SIP revision requesting the incorporation of the use of transfer efficiency using the "Protocol" method and adding appropriate language to allow the use of transfer efficiency credits.

General Motors' further discussion under topcoats, repair primer (in anti-chip booth), stone chip (anti-chip) coating, flexible end caps and bumper, small parts primer (electrodeposition), final repair, chassis, deadener and underbody coatings regarding emission caps has already been discussed above.

Comment #15: General Motors commented that certain coatings such as small parts, repair primer (in anti-chip booth) and repair primer (in Final

Repair) were not addressed in the Notice.

Response: The proposed rulemaking notice addresses the entire Maryland submittal. Therefore, all coatings are addressed, even if not specifically listed in Table 4. Table 4 was meant to provide a basis for comparison to the Maryland revision. The small parts coating (base, clear, HS enamel), repair primer (in anti-chip booth) and the repair primer (in Final Repair) are listed in Table 3.

Comment #16: General Motors comments that other States have recognized the need to regulate plastic parts coating. It further states that the Michigan RACT Rule 632 requires that, by December 31, 1992, plastic parts topcoat paints must meet 4.3 pounds of VOC per gallon plus 0.5 lbs VOC per gallon if EPA Method 24 is used. Therefore, GM concludes, the proposed Maryland limit for plastic parts is at least as stringent as the most current and future determination of what constitutes RACT for an identifiably unique coating application.

Response: At Maryland's request, EPA is taking a single rulemaking action on this Maryland SIP submittal pertaining to GM-Baltimore. The plastic parts coating standard is included as part of the package and therefore cannot be separated and treated differently. The information which Maryland submitted with the requested SIP revision pertaining to GM-Baltimore did not contain any information demonstrating that the proposed plastic parts standard, or any of the other standards, represents RACT for the GM-Baltimore operation.

Comment #17: General Motors commented that the proposed standards for special coatings are justified because the exemption of 35 specially manufactured vehicles per day allows less than 5% of the normal daily production to escape regulation and would only increase emissions by less than 1/2 of 1% per day.

Response: Reasonably Available Control Technology standards are developed and implemented because they represent the industry norm considering technical and economic feasibility. In the case of GM-Baltimore, the plant is one of the most significant point sources of VOC emissions in the Baltimore area. RACT regulations for this plant have been required since 1980. As stated earlier, the Maryland submittal did not provide documentation as to how this exemption constitutes a RACT level of control.

Final Action

The comments which EPA received in response to the May 24, 1989 proposed rulemaking notice did not provide any new information that would justify EPA's changing the proposed rulemaking action. As stated in the May 24, 1989 proposal, the Maryland submittal does not contain information that would support a finding that the requested SIP revision would constitute a control technology at least as effective as that previously approved by EPA as constituting RACT. Therefore, EPA is, with this Notice, disapproving Maryland's request to revise the SIP by amending COMAR 10.18.21.03 pertaining to surface coating regulations for automobile and light-duty truck and associated supplier industries submitted on June 30, 1987. EPA's decision to disapprove this proposed revision to the Maryland SIP is based on a determination that this revision is not consistent with section 110 and part D of the Clean Air Act.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 1990. This action may not be challenged later in proceedings to enforce its requirements (See Section 307(b)(2)).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the *Federal Register* on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of two years.

Nothing in this action, pertaining to the disapproval of the SIP revision for GM-Baltimore and associated supplier industries, should be construed as establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic and environmental factors, and in relation to relevant statutory and regulatory requirements.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Dated: March 22, 1990.

Stanley L. Laskowski,
Acting Regional Administrator.
[FR Doc. 90-7909 Filed 4-5-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3751-8]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of final rulemaking.

SUMMARY: On December 2, 1988, (53 FR 48654), USEPA proposed to approve a site-specific revision to the Wisconsin State Implementation Plan (SIP) for ozone. This revision temporarily relaxes Wisconsin's volatile organic compound (VOC) reasonably available control technology (RACT) regulations for the General Motors Corporation's (GM) Janesville, Wisconsin, facility. The GM facility is located in an ozone attainment area.

USEPA today is approving this revision because (1) the Clean Air Act does not require RACT level VOC control in areas that have always been designated attainment, and (2) SIP relaxations in such areas can be approved if such relaxations do not jeopardize the attainment of the ozone standards by increasing VOC emissions above the historical levels from the sources.

EFFECTIVE DATE: This final rulemaking becomes effective on May 7, 1990.

ADDRESSES: Copies of the SIP revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, at (312) 886-6031, before visiting the Region V office.) United States Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604.

A copy of today's revision to the Wisconsin SIP is available for inspection at: United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, Air and Radiation Branch (5AR-26), United States Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6031.

SUPPLEMENTARY INFORMATION: On January 13, 1987, the Wisconsin Department of Natural Resources (WDNR) submitted a proposed temporary relaxation from its RACT limits until December 31, 1992, for the VOC emissions from GM's topcoat and final repair lines. These operations are located at GM's facility in Janesville,

Wisconsin, which has been designated as an attainment/unclassifiable area for ozone (section 107(d) of the Clean Air Act and § 81.350 of the Code of Federal Regulations).

History of the Variance

GM currently operates six coating systems at its B-O-C Group facility in Janesville, Wisconsin, which are subject to Natural Resources (NR) 154.13(4)(g) of the Wisconsin Administrative Code. Two of these coating systems, top coating and final repair, currently use coatings which exceed the limits contained in NR 154.13(4)(g). This rule limits the VOC content of topcoats and spray primers to 2.8 pounds per gallon of coating, excluding water, after December 31, 1988, and limits the VOC content of final repair coatings to 4.8 pounds per gallon of coating, excluding water, after December 31, 1988. In lieu of these limits, the WDNR has issued a variance for the facility, subject to the following conditions:

1. The following limits shall apply through December 1992, or until the J-Car production line is converted to a different automobile type production line, whichever is sooner:
 - a. 6.2 pounds of VOCs per gallon of coating, excluding water, from a blackout topcoat coating line.
 - b. 5.2 pounds of VOCs per gallon of coating, excluding water, from any other topcoat coating line.
 - c. 6.5 pounds of VOCs per gallon of coating, excluding water, from a spot primer coating line.
 - d. 6.5 pounds of VOCs per gallon of coating, excluding water, from a final repair coating line.

2. The facility shall keep records verifying compliance with the above limitations. These records shall be kept at the facility for a period of 3 years and made available to WDNR officials, upon request.

3. GM shall submit to the WDNR by December 31, 1989, a report detailing the methods to be followed by the facility to achieve compliance with all RACT limitations by December 31, 1992.

These limits would allow GM to continue to use the coatings currently used on these lines. The variance issued by WDNR extends the compliance date up to December 31, 1992, at the latest.

USEPA has evaluated Wisconsin's request under two scenarios, as a site-specific RACT determination and as a relaxation from RACT in an attainment area. As discussed further below, USEPA's policy provides that where a source in an attainment area is subject

to RACT under an accommodative SIP,¹ and that source seeks a compliance date extension, the source must either meet the requirements of USEPA's August 7, 1986, compliance date extension policy, i.e., the source can still be considered to have RACT in place, or the area will lose the accommodative SIP for the duration of the variance because all sources in the county are no longer subject to RACT requirements.²

Compliance Date Extension

In order for an area to retain its accommodative SIP, the State must demonstrate that it is implementing RACT as expeditiously as practicable. The current guidance available for evaluating whether or not a compliance schedule is expeditious is contained in an August 7, 1986, memorandum on compliance date extensions in nonattainment areas. Therefore, although this source is not strictly subject to the requirements of the August 7, 1986, policy, USEPA used the criteria contained in that policy to determine whether GM's compliance schedule is expeditious. USEPA determined that it did not meet these requirements. Thus, the schedule cannot be considered to be expeditious, and the revision cannot be considered RACT.

The revision relaxes a stationary source RACT emission limitation in an area that has been designated as attainment/unclassified for ozone. This is approvable as long as (1) Either the

relaxation does not increase emissions from historical levels and thus maintenance of the standards in the ozone attainment area is not jeopardized, or (2) the State submits an analysis that the relaxation will not jeopardize maintenance of the standards. In the case of the GM revision, approval of the relaxation will result in status quo emissions and no further analysis is necessary to assure maintenance of the ozone National Ambient Air Quality Standards (NAAQS). Thus, the revision is being approved.

Originally, the SIP RACT limitation was imposed by the State, not to satisfy an ozone nonattainment SIP planning requirement, but rather to allow the State to have an accommodative SIP. USEPA's approval of the revision removes the accommodative SIP for Rock County for as long as the relaxation is in place. This means that all new major VOC sources and major modifications in this county must comply with all PSD monitoring requirements while the relaxation is in effect, i.e., no later than December 31, 1992. Because this portion of the State's accommodative SIP never had any effect relative to any designated ozone nonattainment area SIP, the RACT relaxation in this notice will also have no effect on nonattainment areas—all sources wishing to locate in nonattainment areas must continue to comply with the State's federally approved part D new source review program.

Proposed SIP Revision

In a December 2, 1988 (53 FR 48654), proposed rulemaking, USEPA proposed to approve this site-specific revision to the Wisconsin SIP, which would constitute a temporary relaxation from Wisconsin's VOC RACT regulations for GM. Comments on this notice of proposed rulemaking were received from GM and WDNR. These comments and USEPA's response are provided below.

Comments and USEPA's Response WDNR's Comments

WDNR made the following comments concerning the removal of the accommodative SIP for Rock County:

We believe approval of the variance is essential to retaining the J-car production line at the General Motors B-O-C Group facility in Janesville. Clearly this variance would reduce the accommodation available in the Rock County region, but to state Wisconsin has forfeited the entire accommodation due to this variance would be inaccurate. Nevertheless, we would like EPA to approve

¹ An accommodative ozone SIP for areas classified as attainment/unclassifiable requires RACT-level controls on existing sources, in lieu of requiring new major sources of VOC to do preconstruction monitoring. This monitoring would normally be required on new major sources in attainment/unclassifiable areas under USEPA's Prevention of Significant Deterioration (PSD) regulations. The rationale behind this tradeoff is that the "extra" emission reductions obtained from these additional RACT controls would be able to accommodate new source growth in these attainment/unclassifiable areas.

The PSD requirements are contained in sections 160-169 (or part C) of the Clean Air Act. USEPA's regulations for implementing these requirements are found at 40 CFR 51.24 and 52.21. The PSD program addresses the emission limits and control technique technologies which are required for the construction of certain new sources or major modifications of existing sources in attainment areas.

² It should be noted, as discussed in a September 27, 1989, policy memorandum entitled, "Response to Questions on Offset and Relaxations", that USEPA has clarified its policy such that future relaxations of RACT in designated attainment areas will result in the elimination of the accommodative SIP statewide, not just in the applicable counties.

However, also under this policy, Wisconsin's January 13, 1987, submittal for GM Janesville's temporary relaxation revision is "grandfathered" from this requirement, because Wisconsin submitted it in good faith prior to the September 27, 1989, policy. Therefore, USEPA is eliminating the accommodative SIP only in Rock County, the county in which the applicable source is located.

the General Motor's B-O-C Variance, and for future SIP actions involving VOC sources in Rock County, we request the opportunity for involvement in determining the remaining VOC accommodation in this county.

USEPA Response

WDNR appears to be confusing a growth accommodation (margin) for a nonattainment area with an accommodative SIP for an attainment area. In attainment areas, new sources can avoid preconstruction monitoring requirements if the State requires the implementation of RACT statewide. This constitutes an accommodative SIP. In the case of GM, approval of a temporary relaxation would mean that Rock County will not have RACT on major sources until as late as December 31, 1992, and, therefore, new sources constructed in the interim must meet the PSD preconstruction monitoring requirements of part C of the Act.

GM's Comments

GM Stated it support for the proposed action and noted that the proposed rulemaking incorrectly identifies the expiration of the extended compliance date as December 2, 1992, in two places.

USEPA Response

The extended compliance date has been corrected within this notice as being December 31, 1992.

Conclusion

USEPA today is approving this SIP revision because the GM facility is located in an ozone attainment area, and the Clean Air Act does not require RACT level VOC control in areas that have always been designated attainment where such approval will not increase VOC emissions above the historical level from the source. Under USEPA existing policy, no further demonstration of attainment and maintenance is required to approve a revised emission limits in rural ozone attainment areas if such relaxation will not result in an increase in actual emissions. However, USEPA's approval today will remove the accommodative SIP in Rock County until the variance is no longer in effect, i.e., no later than December 31, 1992.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any further request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a table 3 action by the Regional Administrator under the procedures

published in the Federal Register on January 19, 1989, (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table Two and Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years.

Under 5 U.S.C. section 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbon, Intergovernmental relations, Ozone, Incorporation by reference.

Dated: March 21, 1990.

Valdas V. Adamkus,
Regional Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart YY—Wisconsin

Title 40 of the Code of the Federal Regulations, chapter 1, part 52, is amended as follows:

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.2570 is amended by adding paragraph (c)(57) to read as follows:

§ 52.2570 Identification of plan.

(c) * * *

(57) On January 13, 1987, WDNR submitted a temporary variance from NR 154.13(4)(g) and interim emission limits for VOC emissions from General Motors Corporation's topcoat and final repair lines at Janesville, Wisconsin, which expire on December 31, 1992.

(i) Incorporated by reference. (A) January 12, 1987, letter to Mike Cubbin, Plant Manager, General Motors Corporation from L.F. Wible, P.E., Administrator, Division of Environmental Standards.

* * * * *

[FR Doc. 90-7910 Filed 4-5-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-298; RM-6703]

Radio Broadcasting Services; Decorah, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Decorah Radio, Inc., substitutes Channel 263C2 for Channel 265A at Decorah, Iowa, and modifies its license for Station KRDI-FM to specify operation on the higher powered channel. Channel 263C2 can be allotted to Decorah in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.9 kilometers (1.8 miles) north to accommodate petitioner's desired transmitter site. The coordinates for this allotment are North Latitude 43-19-26 and West Longitude 91-47-04. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 18, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-298, adopted March 14, 1990, and released April 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under Iowa is amended by removing Channel 265A and adding Channel 263C2 at Decorah.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 90-7916 Filed 4-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-300; RM-6708]

**Radio Broadcasting Services; York,
NE****AGENCY:** Federal Communications
Commission.**ACTION:** Final rule.

SUMMARY: The Commission, at the request of Gleason Broadcasting Company, Inc., substitutes Channel 285C3 for Channel 285A at York, Nebraska, and modifies its license for Station KAWL-FM to specify operation on the higher powered channel. Channel 285C3 can be allotted to York in compliance with the Commission's minimum distance separation requirements and can be used at the station's licensed transmitter site. The coordinates for this allotment are North Latitude 40-50-30 and West Longitude 97-35-16. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 18, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-300, adopted March 14, 1990, and released April 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under Nebraska is amended by removing Channel 285A and adding Channel 285C3 at York.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 90-7913 Filed 4-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-297; RM-6698]

**Radio Broadcasting Services;
Hatteras, NC****AGENCY:** Federal Communications
Commission.**ACTION:** Final rule.

SUMMARY: The Commission, at the request of Pamlico Sound Company, Inc., substitutes Channel 246C1 for Channel 248C2 at Hatteras, North Carolina, and modifies its construction permit for Station WYND-FM to specify operation on the higher powered channel. Channel 246C1 can be allotted to Hatteras in compliance with the Commission's minimum distance separation requirements and can be used at the transmitter site specified in Station WYND-FM's construction permit. The coordinates for this allotment are North Latitude 35-15-42 and West Longitude 75-33-20. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 18, 1990.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-297, adopted March 14, 1990, and released April 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under North Carolina is amended by removing Channel 248C2 and adding Channel 246C1 at Hatteras.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 90-7914 Filed 4-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket Nos. 89-133, et al.]

**Radio Broadcasting Services; Various
Locations****AGENCY:** Federal Communications
Commission.**ACTION:** Final rule.

SUMMARY: This document reclassifies to Class C3 the Class A allotments for 85 stations in various communities throughout the United States and modifies the authorizations accordingly on the Commission's own motion. See 54 FR 28077, July 5, 1989. The 85 stations are upgraded on the channel presently allotted to the community and at their existing transmitter sites. Canadian concurrence has been received for these upgrades requiring concurrence. With this action, these proceedings are terminated.

EFFECTIVE DATE: May 18, 1990.

FOR FURTHER INFORMATION CONTACT: Ordee D. Pearson, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket Nos. 89-133, 135, 138, 140, 142, 148, 150, 151, 153, 156, 159-161, 165, 166, 168, 170, 175, 176, 178-180, 182, 184-186, 189-193, 195, 197-209, 213-215, 217, 219, 220, 222, 223, 228, 231-235, 237, 239-241, 243, 246, 247, 250, 251, 253, 255, 258, 260, 262, 263, 265-267, 269-273, 276, 277, 280, adopted February 22, 1990, and released April 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended under the following communities by adding and removing channels as specified below:

Community	Add	Remove
Alaska		
Bethel.....	261C3	261A
College.....	280C3	280A
Fairbanks.....	240C3	240A
Juneau.....	292C3	292A
Kenai.....	261C3	261A
Soldatna.....	269C3	169A
Arizona		
Page.....	228C3	228A
Tuba City.....	250C3	250A
California		
Crescent City.....	232C3	232A
Crescent North.....	250C3	250A
Colorado		
Aspen.....	249C3	249A
Gunnison.....	252C3	252A
Hayden.....	240C3	240A
La Junta.....	221C3	221A
Pagosa Springs.....	292C3	292A
Security.....	288C3	288A
Yuma.....	265C3	265A
Florida		
Port St. Joe.....	228C3	228A
Hawaii		
Lahaina.....	228C3	228A
Idaho		
Grangeville.....	224C3	224A
Orofino.....	237C3	237A
Rexburg.....	232C3	232A
Sun Valley.....	237C3	237A
Kansas		
Marysville.....	276C3	276A
Louisiana		
Basile.....	271C3	271A
Bayou Vista.....	237C3	237A
Many.....	296C3	296A
Oak Grove.....	244C3	244A
Michigan		
Gladwin.....	276C3	276A
Glen Arbor.....	251C3	251A
Hancock.....	228C3	228A
Sault Ste. Marie.....	252C3	252A
Minnesota		
Fosston.....	296C3	296A
Hibbing.....	292C3	292A
Mississippi		
Gulfport.....	272C3	272A
Montana		
Anaconda.....	249C3	249A
Belgrade.....	244C3	244A

Community	Add	Remove
Nebraska		
Dillon.....	252C3	252A
Hamilton.....	240C3	240A
Libby.....	269C3	269A
Malta.....	261C3	261A
Missoula.....	261C3	261A
Nevada		
Ely.....	224C3	224A
Ely.....	269C3	269A
Winnemucca.....	224C3	224A
North Dakota		
Dickinson.....	221C3	221A
Grafton.....	265C3	265A
Mayville.....	288C3	288A
Valley City.....	265C3	265A
Oklahoma		
Enid.....	276C3	276A
Guymon.....	224C3	224A
Idabel.....	244C3	244A
Sulphur.....	265C3	265A
Woodward.....	221C3	221A
Oregon		
Baker.....	237C3	237A
Bend.....	252C3	252A
Brookings.....	237C3	237A
Lakeview.....	228C3	228A
Milton-Freewater.....	250C3	250A
South Carolina		
Newberry.....	292C3	292A
South Dakota		
Pierre.....	224C3	224A
Texas		
Belton.....	292C3	292A
Bonham.....	252C3	252A
Bowie.....	264C3	264A
Breckenridge.....	228C3	228A
Clarksburg.....	253C3	253A
Dahart.....	240C3	240A
Dimmit.....	240C3	240A
Dumas.....	237C3	237A
Graham.....	296C3	296A
Hereford.....	292C3	292A
Mineral Wells.....	240C3	240A
Quanah.....	265C3	265A
Tulia.....	285C3	285A
Utah		
Moab.....	244C3	244A
Price.....	252C3	252A
Washington		
Prosser.....	269C3	269A
Raymond.....	249C3	249A
Spokane.....	280C3	280A
Wisconsin		
Medford.....	257C3	257A

Community	Add	Remove
Wyoming		
Cheyenne.....	292C3	292A
Torrington.....	252C3	252A
American Samoa		
Pago Pago.....	221C3	221A

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-7915 Filed 4-5-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB41

Endangered and Threatened Wildlife and Plants; Emergency Listing of the Sacramento River Winter-Run Chinook Salmon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Service is adding the Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*) to the List of Endangered and Threatened Wildlife for 240 days. This measure is required by section 4(a)(2)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) in order to implement an emergency determination of threatened status by the National Marine Fisheries Service, which has jurisdiction for the winter-run Chinook Salmon.

DATES: This emergency listing is effective on April 2, 1990 and expires on November 28, 1990, or until the final listing is effective, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph Morgenweck, Assistant Director for Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, DC 20240 (202/343-4646).

SUPPLEMENTARY INFORMATION: Under the Endangered Species Act, and in accordance with Reorganization Plan No. 4 of 1970, the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Department of Commerce, is responsible for the Sacramento River winter-run Chinook

salmon. Under section 4(a)(2)(A) of the Act, NMFS must decide whether a species under its jurisdiction should be listed as endangered or threatened. The Fish and Wildlife Service (FWS) is responsible for the actual addition of a species to the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h).

NMFS published its emergency determination of threatened status for the Sacramento River winter-run Chinook salmon published April 2, 1990 (55 FR 12191) in final rules section under the Department of Commerce, National Oceanic and Atmospheric Administration). Accordingly, the FWS is required by section 4(a)(2)(A) of the Act to add the Sacramento River winter-run Chinook salmon as a threatened species to the List of Endangered and Threatened Wildlife for the 240-day period of the NMFS emergency rule.

Because this FWS action is nondiscretionary, and in view of NMFS's emergency finding under section 4(b)(7) of the Act, the FWS finds that good cause exists to omit the notice and public comment procedures of 5 U.S.C. 553(b).

The FWS also has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969 does not need to be prepared in regard to regulations adopted under section 4(a) of the Act. A notice outlining the reasons for this determination was published in the *Federal Register* on October 25, 1985 (48 FR 49244).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter 1, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1543; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended from April 2, 1990, through November 28, 1990, by adding the following, in alphabetical order, to the List of Endangered and Threatened Wildlife under "FISHES":

§ 17.11 Endangered and threatened wildlife.

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES:							
Salmon, chinook.....	(<i>Oncorhynchus tshawytscha</i>).	Pacific Ocean.....	USA (CA: Sacramento R. winter run).	T	383	226.21	227.21

Dated: March 30, 1990.

Richard N. Smith,
Acting Director, Fish and Wildlife Service.
[FR Doc. 90-7958 Filed 4-5-90; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

RIN 0648-AD06

[Docket No. 900258-0080]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: NOAA announces an interim final rule to suspend for 180 days vessel registration requirements for the

sablefish hook-and-line fishery in the Gulf of Alaska. This action is necessary to suspend this regulation on an interim basis while NOAA considers and solicits public comments on its permanent repeal. It is intended to promote the goals and objectives of the North Pacific Fishery Management Council with respect to groundfish management off Alaska.

DATES: Section 672.6 is suspended from April 1, 1990 until September 28, 1990. Comments must be submitted on or before June 1, 1990.

ADDRESSES: Comments may be sent to Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802. Copies of the environmental assessment may be obtained from the same address. Comments on the environmental assessment are particularly requested.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Fishery Management Biologist, NMFS), 907-586-7230.

SUPPLEMENTARY INFORMATION:

Background

This interim final rule suspends for 180 days the regulation requiring vessel registration in the sablefish hook-and-line fishery in the Gulf of Alaska. A description of, and reasons for, this action follow:

Regulations at 50 CFR 672.6 require hook-and-line vessels to register for each regulatory area or district in the Gulf of Alaska before fishing for groundfish in areas or districts that are open to directed sablefish fishing. These regulations have been in effect since 1987. They were intended to allow the Regional Director to determine amounts of fishing effort during the sablefish hook-and-line fishery. Because the fishery was prosecuted during a short time period and fishing effort was variable, estimates of the number of hook-and-line vessels on the fishing grounds initially were used by NMFS fishery managers in the Alaska Region to predict season closures in the sablefish fishery.

Area registration was initially useful during the fishing years 1987 and 1988 for management of the sablefish fishery. After some changes in participation by vessels in response to the North Pacific Fishery Management Council's initiatives to develop a limited entry system for the sablefish hook-and-line fishery, the number of vessels in the sablefish fleet has stabilized. This stable trend is demonstrated most recently by comparing the number of 1990 groundfish permit applications with the number of permits issued for 1989. Management during 1989 was not based on area registration, although vessels were required to comply with the regulation. Catches by the fleet during the fishing season can be estimated at any date on the basis of expected catch rates and size of the fleet. For the most part, area registration was only useful in those parts of the Gulf of Alaska where fishing proceeded rapidly from start to finish. In other parts of the Gulf of Alaska, the fishery proceeded slowly and was also interrupted by season openings for Pacific halibut in which numbers of sablefish vessels would leave the sablefish fishery and not return for several days. Without a parallel system for vessel check-out in those areas, the area registration system provided information of little use.

Based on the foregoing and taking into account the administrative burden on NMFS and the paperwork burden on fishermen, the Regional Director has preliminarily determined that the area registration regulation is no longer necessary.

The Secretary concurs with the Regional Director's determination and is suspending this regulation for 180 days on an interim basis. He is also soliciting public comments on the permanent repeal of this regulation.

Certain savings will accrue to NMFS and to the fishing industry as a result. When the program was in effect, NMFS provided toll-free telephone numbers for use by fishermen registering by telephone from within and from outside Alaska. Telephone costs were about \$2,660 a year. NMFS labor costs were about \$2,480 per year. Fishermen were

required to spend some of their own time to register prior to fishing. NMFS estimates that about 93 hours and \$930 in labor costs at \$10/hour were spent annually by the industry to comply with the area registration program. In sum, Federal and industry costs have been about \$6,090 per year. These costs will be avoided by this action.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has preliminarily determined that the sablefish area registration rule is no longer necessary for conservation and management of the groundfish fishery off Alaska, and has determined that this interim final rule is consistent with the Magnuson Fishery Conservation and Management Act.

The Alaska Region, NMFS, prepared an environmental assessment (EA) for the repeal of the area registration regulation rule. The Assistant Administrator concluded that no significant impact on the environment will occur as a result of this rule. Copies of the EA may be obtained from the Regional Director at the above address.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this interim final rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA prepared by the Alaska Region, NMFS.

The Assistant Administrator has preliminarily determined that the area registration regulation is no longer necessary for conservation and management of the directed sablefish fishery in the Gulf of Alaska, scheduled to open on April 1, 1990. The Assistant Administrator finds that requiring compliance with this area registration regulation while NOAA is considering its permanent repeal is impracticable and contrary to the public interest. Consequently, the Assistant Administrator waives for good cause the notice and public procedure requirements of section 553 of the Administrative Procedure Act, 5 U.S.C.

553, for this interim final rule under section 553(b)(3)(B). For these same reasons, and because this interim final rule relieves a restriction, the Assistant Administrator also waives the 30-day delayed effectiveness requirement of section 553(d) of the Administrative Procedure Act.

This interim final rule is exempt from the procedures of the Regulatory Flexibility Act, because it is issued without opportunity for prior public comment.

This rule temporarily rescinds a collection of information requirement subject to the Paperwork Reduction Act equal to a burden of 93 hours per year.

NOAA has determined that this interim final rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

This interim final rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 672

Fisheries.

Dated: March 30, 1990.

James E. Douglas, Jr.,
Deputy Assistant Administrator For
Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 672 is amended as follows, effective from April 1, 1990 until September 28, 1990.

PART 672—GROUND FISH OF THE GULF OF ALASKA

1. The authority citation for part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 672.6 [Suspended]

2. Section 672.6 is suspended.

[FR Doc. 90-7906 Filed 4-2-90; 3:34 pm]

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Proposed Rules

Federal Register

Vol. 55, No. 67

Friday, April 6, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

GENERAL ACCOUNTING OFFICE

4 CFR Part 21

Bid Protest Regulations

AGENCY: General Accounting Office.

ACTION: Proposed regulation amendments.

SUMMARY: The General Accounting Office (GAO) is proposing to amend its Bid Protest Regulations (4 CFR part 21). The proposed amendments refine the regulations following the receipt of comments solicited in an Advance Notice of Proposed Rulemaking published by the General Accounting Office (54 FR 14361, April 11, 1989). The changes are intended to improve the effectiveness of the bid protest process especially in the areas of document production, hearings, and remedies.

DATES: The General Accounting Office will consider comments received on or before August 15, 1990.

ADDRESSES: Send comments to U.S. General Accounting Office, Office of General Counsel, 441 G Street, NW Washington, DC. 20548.

FOR FURTHER INFORMATION CONTACT: John Brosnan, Assistant General Counsel, General Accounting Office, by telephone (202) 275-9714.

SUPPLEMENTARY INFORMATION: On April 11, 1989, the General Accounting Office (GAO) published an Advance Notice of Proposed Rulemaking soliciting comments on how its bid protest regulations could be amended to improve the effectiveness of the protest process. (54 FR 14361, April 11, 1989). The Notice specified that GAO was particularly interested in comments concerning the release of agency documents during a protest and regarding formal fact finding hearings. GAO received 25 comments in response to the April 11 notice. Several contracting agencies expressed concern about the release of proprietary data and competition sensitive information, while several comments from the private

sector expressed support for GAO's past document release efforts and urged expansion of the current document release procedure to include the use of GAO-issued protective orders or agreements. Further, a number of comments were received which supported GAO's current practice of granting fact finding conferences sparingly while others stated that such conferences should be held more frequently. There did appear to be a consensus that GAO's current practice concerning its informal conferences should be altered to insure that they are more efficient and effective. More generally, there was disagreement as to whether GAO procedures should provide for more document production and more formalized conferences—those representing protesters urged adoption of a protective order procedure and more fact finding conferences, while the procuring agencies expressed the desire that the GAO procedures remain largely unchanged.

In July, 1989, the Bid Protest Committee of the American Bar Association Section of Public Contract Law issued its assessment of the bid protest experience since the enactment of the Competition in Contracting Act of 1984 (CICA). Based on a survey of protesters, counsel for protesters, government protest counsel and procurement officials, the report contained a number of recommendations for regulatory changes: Requiring agencies to notify the protester when they override a CICA-imposed procurement suspension; requiring agencies to list all documents requested by protesters and to provide them to GAO; changing GAO's standard for granting formal fact finding conferences; issuing protective orders; and awarding protest costs where the agency takes voluntary corrective action. Two recommendations—to change informal conference procedures and to modify GAO's standard for reviewing procurement actions—would not require changes in the bid protest regulations.

GAO believes that its bid protest process should remain as uncomplicated and informal as possible, consistent with the goal of providing expeditious and meaningful relief to vendors wrongfully excluded from procurements. In this connection, the bid protest process operates most effectively when

each of the parties involved in a bid protest is given a full opportunity to present its side of the case and to respond to the arguments of the other side. To assure that all sides of a protest are fully presented, a protester must be given access to all information considered by the procuring agency in making the determination that forms the basis of the protest, unless a restriction on access is clearly justified. When necessary to assure that a correct agency determination has been made, the agency officials concerned should be willing to explain the basis for their determination at a hearing before a GAO official with the protester present and to respond to proper and relevant questions.

With these considerations in mind, GAO is proposing to enhance the procedural tools made available in the December 1987 regulation amendments which (1) provided that GAO would review whether a withheld agency document requested by a protester should be released, and (2) provided for a formal fact finding hearing before a GAO hearing official whenever there is a factual dispute which must be resolved. In addition, those amendments allowed the recovery of protest costs whenever a protest is determined by GAO to be valid.

First, GAO is proposing several amendments to its regulations to assure protesters that they have the information necessary to present their cases fully and fairly. These include substantial revisions to the document disclosure provisions and the issuance, for the first time, of protective orders by GAO. Second, GAO is proposing to replace both the informal conference procedures and the fact finding hearing procedures. While these conferences have proven useful in many cases, the informality of current procedures and the absence of a hearing record have not assured that the parties attending conferences are adequately prepared to respond to the issues raised. Moreover, informal conferences have generally been held in any case in which one has been requested, irrespective of the extent to which a conference would be beneficial in resolving the protest. Fact finding hearings have proven useful to the resolution of protests and GAO's experience with them indicates that they should be used on more occasions than previously.

In place of these two procedures, GAO is proposing a single hearing procedure that may be more or less formal depending upon the nature of the protest, but which will include a record of the proceedings in each case. The hearing would be conducted by an appropriate GAO official, who would determine prior to the hearing, after discussion with the parties, which witnesses should be present, whether an arrangement to protect restricted information is necessary prior to conducting the hearing, and whether other restrictions on the release of information should be imposed. GAO would not conduct a hearing in every case in which it is requested but only in those instances where GAO decides it would serve to clarify the legal or factual issues raised.

The proposal would also amend the Bid Protest Regulations to provide protesters who have incurred costs (including attorneys' fees) in pursuing a meritorious protest with a remedy where the agency takes voluntary corrective action but does not do so until after the date for submission of the agency report on the protest. GAO is particularly interested in the agencies' views as to whether this proposed change would in fact encourage more prompt corrective action.

These proposed amendments, as well as other proposed amendments, along with explanations, are set forth below.

Section 21.2(a)(1) is amended to clarify that protests based on alleged improprieties which are apparent prior to bid opening or the closing time for receipt of proposals shall be filed prior to the bid opening or to the time set for receipt for proposals.

Former § 21.3(d) is deleted, and a new § 21.3(d) is added to establish that agency reports shall include all relevant information, and that this information, as well as all relevant information specifically requested by the protester, generally is considered releasable to the protester and other interested parties. At the same time, in recognition of the existence of privileged information, and information that would confer a competitive advantage on the protester or interested parties, § 21.3(d)(1) establishes that GAO may issue a protective order in response to a contracting agency's request, where appropriate to limit the release of such information to outside counsel for both the protester and appropriate interested parties. It is GAO's view that release of information to counsel under such protective orders may afford the parties a fuller opportunity to pursue and support their protest arguments. GAO is of the view that sufficient sanctions to

deter violations of protective orders are available, including referral of violations to the appropriate bar association of other disciplinary body and restricting the practice of counsel before GAO. 31 U.S.C. 711.

New § 21.3(d)(2) retains current document release procedures in cases where protective orders are not feasible, such as where the protester or interested party is not represented by outside counsel. In such cases, GAO will continue to consider whether release of allegedly privileged documents is appropriate based on a review of the agency's reasons for nonrelease and arguments presented by parties seeking release. This section requires that the agency include in its report a list of all documents withheld and furnish all requested documents to GAO.

Former § 21.3(h) has been deleted, and new § 21.3(h) added to provide specific means GAO may employ to ensure compliance by all parties with the terms of a protective order, including release of the documents by GAO, drawing an inference adverse to the party refusing to cooperate, and disallowing the uncooperative party's response to designated bases of protest or defenses.

Section 21.3 has been reorganized by redesignating several sections to make the regulations clear in light of the new changes.

The preamble to § 21.4 is amended by adding a sentence referring to the contracting officer's duty under Federal Acquisition Regulation § 33.104(d) to notify the protester and other interested parties of a decision to proceed with award or continue contract performance notwithstanding a pending protest. Further, § 21.0 is amended by adding a phrase to paragraph (e) so that the reference to § 21.4 is consistent with the amended language in § 21.4.

A new § 21.5 entitled "Hearings" will replace the previous § 21.5 which was entitled "Conference." Experience has shown that more formal proceedings than the informal conferences conducted by GAO can have a positive impact on the protest process. In many informal conferences, the parties and agencies did not send representatives who were adequately prepared to respond to the issues under protest, or the representatives attending declined to substantively participate in the discussion or respond to questions by the other party. These practices limit the usefulness of conferences, so that little clarification or additional information is made available beyond what was already provided in the written record. Moreover, GAO's experience with fact finding conferences to establish factual records from oral testimony during the

past 2 years has shown the value of more formal, structured hearings in the resolution of bid protests.

Under this proposed change, GAO may grant requests that it conduct hearings to allow the parties to develop the bid protest record through oral argument and/or oral testimony. GAO may designate particular individuals to attend so that all parties will have the opportunity to hear the positions of representatives adequately prepared to respond to the protest issues and to direct questions at those representatives. The nature and extent of oral testimony, both direct and in cross-examination, will be determined on a case-by-case basis by the GAO hearing officer as resolution of the protest issues may require. The provisions of 18 U.S.C. 1001 (1988) are applicable to false or fraudulent statements made at the hearing. Normally, a record of the proceeding will be made either by electronic recording or a court reporter.

Under the new § 21.5, hearing requests will be granted where the GAO determines that a hearing will serve to clarify the legal and factual issues of the protest.

Under the new § 21.5(a), the protester or interested party or the agency may request a hearing. Such requests should be made as early as possible in the protest proceeding and should set forth the reasons why the hearing should be held and list the specific factual issues the party believes require oral testimony to resolve, as well as suggested witnesses.

The possibility of a pre-hearing conference, usually scheduled prior to receipt of an agency report, has been added to the procedures by the new § 21.5(b). The purpose of this conference will be primarily to resolve procedural matters related to the protest.

Under the new § 21.5(c), the hearings will be conducted by a qualified GAO hearing official. In appropriate cases, hearings may be conducted outside GAO's main offices in Washington, DC to facilitate the convenience and economy of the process.

The new § 21.5(d) provides that interested parties, for hearing participation purposes, shall be limited to those who meet the definition under § 21.0(b) of these regulations. Other participants in the procurement who are not interested parties may be permitted to attend as observers and may participate in the hearing only to the extent allowed by the GAO hearing official. This constitutes a change from GAO's previous practice of permitting essentially any party who participated

in the procurement to participate in the conference. Also, since many protests involve proprietary data or other privileged or competitively advantageous information, there have been instances where conferences have not resulted in the full and open exchange and discussion of information most relevant to the protest issues. Protective orders under § 21.3(d)(1) will apply to information discussed at the hearing. If an appropriate protective order cannot be effected to protect proprietary and other privileged information, then attendance may be restricted for all or part of the hearing.

The new § 21.5(e) incorporates the requirement under the current regulations that all parties be represented by individuals adequately prepared to respond to the protest issues. The new section also provides that GAO, in its discretion, may designate individuals or agency representatives to attend and be questioned by the parties and GAO. Such questioning will be under such procedures as the GAO hearing official designates. In order to minimize the considerable burdens that hearings place on parties and to expedite the proceedings, hearings may be more or less formal as the particular protest requires; oral testimony with cross-examination may not be necessary in many cases.

Under the new § 21.5(f), hearings will normally be recorded by electronic devices or by a court reporter as authorized by the GAO hearing official. Recordings that are not transcribed by a court reporter will be available for listening by the parties.

The new § 21.5(g) provides that where an agency or party declines to participate or answer a relevant question, the GAO may draw an inference unfavorable to the party refusing to cooperate.

The new § 21.5(h) contains a number of changes that, with some exceptions, essentially synthesize several previous sections concerning the submission of post-conference comments. While separate comments on an agency report normally will not be filed when a hearing is held, GAO may require the filing of such comments if it believes it necessary to adequately focus the hearing. No such comments were solicited in the former Bid Protest Regulations. As under the former regulations, post-hearing comments are normally due within 7 working days of the hearing date, however, under appropriate circumstances this period may be extended (or compressed) by the hearing official. Failure to timely file comments may result in the dismissal of

a protest where the hearing official deems it appropriate in view of the nature of the material requested or required in the comments.

Under the new § 21.5(i), provision is made for the GAO hearing official to make relevant findings of fact that will be made part of the bid protest decision. Previously, such findings of fact were only made after the conduct of fact finding conferences. To assist the GAO in this regard, this section admonishes the parties to reference all testimony, admissions and comments made during the hearing that are considered relevant to the disposition of the protest.

Section 21.6 is amended to redesignate paragraph (e) as paragraph (f) and to add a new paragraph (e) stating that GAO may declare a protester entitled to recover the reasonable costs of filing and pursuing a protest, including attorneys' fees, where the contracting agency decides to take corrective action in response to a protest, but does not notify GAO of its decision to do so until after the date for submission of the agency report. GAO thinks that, based on the submissions before it at the time and the agency's corrective action, GAO may award protest costs under 31 U.S.C. 3554(c)(1).

GAO believes that some agencies may have taken longer than necessary to initiate corrective action in some meritorious cases, so that protesters expending time and resources had to make significant use of the protest process before obtaining relief. The new provision should encourage contracting agencies to recognize and respond to meritorious protests early in the protest process.

Section 21.6(f), formerly § 21.6(e), is amended to require that a protester submit its claim for costs, detailing and certifying the time expended and costs incurred, to the contracting agency within 60 days after receipt of the GAO decision on the protest or the declaration of entitlement to costs. If the protester fails to file its claim within that period, it may forfeit its right to recover such costs.

List of Subjects in 4 CFR Part 21

Administrative practice and procedure, Government contracts.

The bid protest regulations are amended as follows:

PART 21—[AMENDED]

1. The authority citation for 4 CFR part 21 continues to read as follows:

Authority: 31 U.S.C. 3551-3556.

§ 21.2 [Amended]

2. In § 21.2(a)(1), the first sentence is amended by removing the words "or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals" and adding "or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for receipt of initial proposals."

§ 21.3 [Amended]

3. a. In § 21.3, paragraph (h) is removed and paragraphs (c), (e), (f), (g), (i), (j) and (k) are redesignated as paragraphs (e), (f), (g), (h), (c), (k) and (j), respectively.

b. In § 21.3, newly redesignated paragraph (c) is amended by adding "all evaluation documents," in the second sentence, after the word "protested."

c. The paragraph is further amended by removing the fifth and sixth sentences in their entirety, beginning with the word "Copies" and ending with "withheld documents."

d. The paragraph is further amended by removing "(Supp. III 1985)" from the fourth sentence and adding "(Supp. V 1987)."

e. In § 21.3, paragraph (d) and paragraphs (d)(1) and (d)(2) are removed and new paragraph (d) and paragraphs (d)(1) and (d)(2) are added as follows:

* * * * *

(d) Copies of the report on the protest provided to the General Accounting Office, the protester and interested parties entitled to receive them under paragraph (c) of this section shall include all relevant documents, subject to the following:

(1) The contracting agency may request that the General Accounting Office issue a protective order limiting the release of particular documents to counsel for the protester and the interested parties entitled to receive the documents, where the documents are claimed to contain information that is privileged, or the release of which would result in a competitive advantage. The request shall be filed with the General Accounting Office, the protester, and appropriate interested parties as soon as practicable after the protest is filed, but in no case more than 15 days after the protest filing date. The terms of the protective order shall be determined by conference, telephone conference or other appropriate means prior to the due date for the agency report under § 21.3(c).

(2) Where the agency withholds relevant documents from a party for any reason, the agency shall include in the report filed with the General Accounting Office and in the copies of the report provided to the protester and interested

parties a list of the documents withheld and the reasons for withholding them. All relevant documents and any documents specifically requested by the protester shall be furnished to the General Accounting Office.

* * *

f. In § 21.3, newly redesignated paragraph (e) is amended by removing "(i)" and adding "(c)."

g. In § 21.3, newly redesignated paragraph (f) is amended by removing the end of the last sentence following the words "General Accounting Office" and adding "and appropriate interested parties, the requested documents in accordance with § 21.3(d). A request by the agency that release of any additional documents be limited by protective order shall be made within this 5-day period."

h. In § 21.3, newly redesignated paragraph (g) is amended by adding after the word "party" at the end of the first sentence, "and whether that release should be pursuant to a protective order under § 21.3(d)(1)."

i. The first sentence of this paragraph is further amended by removing (d) and adding (c) and by removing (e) and adding (f).

j. The paragraph is further amended by adding after the word "them" and before the word "or" in the second sentence, "subject to the terms of the protective order, if any."

k. In § 21.3, newly redesignated paragraph (h) is amended by removing "(k)" and adding "(j)."

l. In § 21.3, new paragraph (i) is added as follows:

* * *

(i) When the contracting agency fails to provide documents in accordance with § 21.3(d), the General Accounting Office may take any or all of the following actions:

(1) Provide the documents to the party or parties entitled to receive them;

(2) Use any authority available under chapter 7 of title 31, United States Code, to provide the documents to the party or parties entitled to receive them;

(3) Draw an inference unfavorable to the agency;

(4) Not allow responses to designated arguments or bases of protest by the agency; or

(5) Impose such other sanctions as may be appropriate.

* * *

m. In § 21.3, paragraph (m)(1) is amended by adding "(1982)" after "41 U.S.C. 601-13" at the end of the subparagraph.

n. In § 21.3, paragraph (m)(2) is amended by adding "(1988)" after "15 U.S.C. 637(b)(6)."

o. In § 21.3, paragraph (m)(4) is amended by adding "(1988)" after "15 U.S.C. 637(a)" at the end of the subparagraph.

p. In § 21.3, paragraph (m)(6) is amended by removing "(Supp. III 1985)" after "40 U.S.C. 759(h)" and adding "(Supp. V 1987)."

q. In § 21.3, paragraph (m)(8) is amended by removing "(Supp. III 1985)" after "31 U.S.C. 3551-3556" and adding "(Supp. V 1987)."

v. In § 21.3, paragraph (m)(9) is amended by adding "(1982 and Supp. V 1987)" after "41 U.S.C. 35-45" at the end of the subparagraph.

§ 21.0 [Amended]

4. In § 21.0, paragraph (e) is amended by adding between the words "where" and "the" in the first sentence "in large part."

§ 21.4 [Amended]

5. In § 21.4, the introductory text is amended by removing "(Supp. III 1985)" and adding "(Supp. V 1987)." The introductory text is further amended by adding the following after the first sentence:

* * * There is an additional requirement contained in Federal Acquisition Regulation § 33.104(d) that the contracting officer give written notice to the protester and other interested parties of any decision to proceed with award or continue contract performance. * * *

§ 21.5 [Amended]

6. In § 21.5, the section title is amended by removing "Conferences" and adding "Hearings". Section 21.5 is revised as follows:

§ 21.5 Hearings.

A hearing on the merits of the protest may be held where the General Accounting Office decides that a hearing will serve to clarify the legal and factual issues raised.

(a) A request for a hearing may be made by the protester, an interested party who has responded to the notice given under § 21.3(a), or the contracting agency. The request shall set forth the reasons why a hearing is needed for the particular protest and should be made at the earliest possible time in the protest proceeding. The request should also identify any specific factual disputes essential to the resolution of the protest which the requester believes cannot be resolved without oral testimony. The determination to hold a hearing will be at the discretion of the General Accounting Office.

(b) Prior to the hearing the General Accounting Office may hold a pre-hearing conference to discuss and resolve procedural matters related to the protest, which may include such matters as whether a protective order should be issued under § 21.3, whether other restrictions on the release of documents may be imposed, and which representatives of the parties should attend the hearing. Ordinarily, such conferences shall be scheduled prior to receipt of the agency report.

(c) Hearings will be conducted by a General Accounting Office hearing official on a date set by the General Accounting Office as soon as practicable after receipt by the protester and participating interested parties of the agency report and relevant documents. Although hearings ordinarily will be conducted at the General Accounting Office in Washington, DC, hearings may, at the discretion of the General Accounting Office, be conducted at other appropriate locations. Ordinarily, only one hearing will be held on a bid protest.

(d) All interested parties as defined in § 21.0(b) shall be invited to attend the hearing. Other participants in the procurement who are not interested parties may be permitted to attend as observers and may participate in the hearing only to the extent allowed by the General Accounting Office hearing official. If privileged information or information, the release of which would result in a competitive advantage, is to be disclosed at the hearing, the General Accounting Office hearing official, in his or her discretion, may restrict attendance for all or part of the proceeding.

(e) All parties shall be represented by individuals who are knowledgeable about the subject matter of the protest. The General Accounting Office may designate representatives of the agency, the protester and participating interested parties to attend the hearing. Such representatives may be questioned by the attending parties and the hearing official under such procedures as the General Accounting Office may establish.

(f) Hearings shall normally be recorded and/or transcribed. If a recording or transcript is made, any party may obtain copies at its own expense.

(g) If the representative of any party, whose attendance has been requested by the General Accounting Office, refuses to attend such hearing or fails to answer a relevant question, the General

Accounting Office may draw an inference unfavorable to the party refusing to cooperate.

(h) If a hearing is held, no separate comments under § 21.3(j) should be submitted unless specifically requested by the General Accounting Office. The protestor, all participating interested parties and the contracting agency may file comments on the hearing and report as appropriate with the General Accounting Office, with copies furnished to the other parties, including the contracting agency, within 7 days of the date on which the hearing was held. The General Accounting Office may adjust the time for submission of comments in appropriate circumstances. Failure of the protestor to file comments, or to file a written statement requesting that the case be decided on the existing record by the date due may result in dismissal of the protest.

(i) In the post-hearing comments, parties should reference all testimony, admissions, or comments made during the hearing that they consider relevant to the disposition of the protest. Where appropriate, relevant findings of fact by the General Accounting Office hearing official shall be part of the bid protest decision.

§ 21.6 [Amended]

7.a. In § 21.6, paragraph (e) is redesignated as paragraph (f) and amended by adding the following sentences after the first sentence: "The protestor shall file its claim for costs, detailing and certifying the time expended and costs incurred, with the contracting agency within 60 days after receipt of the decision on the protest or the declaration of entitlement to costs. Failure to file the claim within such time may result in forfeiture of the protestor's right to recover its costs."

b. In § 21.6, a new paragraph (e) is added to read as follows:

* * * * *

(e) If the contracting agency decides to take corrective action in response to a protest and so notifies the General Accounting Office after the date for submission of the report under § 21.3(i), the General Accounting Office may declare the protestor to be entitled to recover reasonable costs of filing and pursuing the protest, including attorneys' fees.

Charles A. Bowsher,
Comptroller General of the United States.
[FR Doc. 90-7743 Filed 4-5-90; 8:45 am]

BILLING CODE 1610-10-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 250 and 251

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under Its Jurisdiction, and Temporary Emergency Food Assistance Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Temporary Emergency Food Assistance Program Regulations (7 CFR part 251) and the Food Distribution Program Regulations (7 CFR part 250) to implement certain provisions of the Hunger Prevention Act of 1988, Public Law 100-435. The major proposals in this rule: extend the Temporary Emergency Food Assistance Program through Fiscal Year 1990; provide for the distribution of additional commodities for use by emergency feeding organizations, soup kitchens and food banks in providing food assistance to needy households and homeless individuals; address the distribution of non-USDA foods by emergency feeding organizations; increase the amount of administrative funds that States are required to pass through to emergency feeding organizations from 20 percent to 40 percent; require State and local maintenance of efforts; and permit States to give priority to existing networks and organizations that distribute food to low-income households when distributing commodities under the Temporary Emergency Food Assistance Program.

DATES: To be assured of consideration, comments must be postmarked no later than June 5, 1990.

ADDRESSES: Comments should be sent to: Susan Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302.

Comments in response to this rule may be inspected at 3101 Park Center Drive, room 506, Alexandria, Virginia, during normal business hours (8:30 a.m. to 5 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Susan Proden, Chief, Program Administration Branch, at (703) 756-3660.

SUPPLEMENTARY INFORMATION: With the exception of the provisions described below, the requirements set forth in this proposed rulemaking reflect provisions contained in Public Law 100-435, the

Hunger Prevention Act of 1988, hereinafter referred to as "the Act." Section 701(a) of the Act mandated that the majority of the requirements contained in this rule take effect and be implemented by October 1, 1988. The only exceptions applicable here (as set out in section 701(b) of the Act) are the requirements that States increase the percentage of Federal administrative funding passed through to the local level from 20 to 40 percent and the extension of the Temporary Emergency Food Assistance Act through September 30, 1990; these requirements become effective upon enactment of the Act, which was September 19, 1988. Proposed requirements which are not mandated by the Act and on which the Department has discretion are described below in the following paragraph.

Since enactment of Public Law 100-435, the Department and States have worked cooperatively to ensure that all requirements imposed by the Act have been put into effect and that commodities have been purchased and distributed as specified in the Act. The Department intends for States to maintain the program operations that were implemented in response to the Act and that are currently in use for allocating and distributing the additional commodities purchased under the authority of the Act. Nevertheless, the Department would like to take this opportunity to solicit recommendations from commenters who have suggestions for improvements to the procedures currently in place as described in this rulemaking.

This rule also proposes to make four other changes to the Temporary Emergency Food Assistance Program (TEFAP) regulations: A reduction in the required monitoring by State agencies, clarification of the state matching requirement, inclusion of references to 7 CFR part 3016, and a change in reference to the form used to report State and local TEFAP costs. The reduction in monitoring is made in recognition of the fact that the amount of commodities currently donated through TEFAP is significantly lower than at the time the monitoring requirement was first imposed. The change to the State matching requirement is necessary to bring the TEFAP regulations into closer conformity with the Department regulations regarding matching requirements. Changing prior 7 CFR part 3015 references is needed in order to cite to the new Departmental regulations which supplant the Part 3015 regulations with respect to non-entitlement grant programs. Reference to a new form for

reporting State and local TEFAP costs to conform to the designation for the recently approved form for collection of required information; no new data is being collected as a result of this change. The Department particularly solicits comments on these proposed revisions.

This proposed rule has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. Compliance with the provisions in this rule will not have an annual effect on the economy of more than \$100 million or more nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action has been reviewed with regard to the Regulatory Flexibility Act (5 U.S.C. 601-612) and the Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3520), additional recordkeeping and reporting requirements contained in this interim rule are subject to review and approval by the Office of Management and Budget (OMB). Current reporting and recordkeeping requirements for part 251 were approved by OMB under control number 0584-0313 and 0584-0341. Current reporting and recordkeeping requirements for part 250 were approved under control number 0584-0007.

These programs are listed in the Catalog of Federal Domestic Assistance under 10.550 and 10.568 and are subject to the provisions of Executive Order 12472 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V and the final rule related notices published at 48 FR 29114, June 24, 1983 and 49 FR 22676, May 31, 1984).

Background

This rule proposes to implement certain requirements of Public Law 100-435, the Hunger Prevention Act of 1988 which was enacted on September 19, 1988. The major purposes of the Act are to require the Secretary to purchase additional commodities for distribution to low-income households, to improve the Child Nutrition and Food Stamp

Programs, and to provide other hunger relief to needy households and the homeless. This rulemaking proposes to implement the provisions contained in the Act which affect the distribution of commodities. Separate rulemakings address the provisions of the Act that affect the Child Nutrition Programs and the Food Stamp Program.

The current regulations that are proposed to be amended include:

(1) The regulations for the Temporary Emergency Food Assistance Program (7 CFR part 251) that outline the responsibilities of State agencies with regard to the distribution of federally-donated foods to emergency feeding organizations (EFOs); and

(2) The Food Distribution Program Regulations (7 CFR part 250) that outline the responsibilities of distributing agencies with regard to the distribution of federally-donated foods to various organizations including charitable institutions.

Additional Commodities

Temporary Emergency Food Assistance Program (TEFAP)

Section 104 of the Act amends the Temporary Emergency Food Assistance Act of 1983 (TEFAA) to add sections 213 and 214. Paragraph (e) of section 214 requires the Secretary to spend \$120 million to purchase, process and distribute additional commodities during Fiscal Years 1989 and 1990. Paragraph (b) of section 214 specifies that these commodities are to be made available to States in addition to the commodities made available under sections 202 and 203D(a) of the TEFAA. Paragraph (a) of section 213 specifies that these commodities are for State distribution to EFPs. Section 201A(1) of the TEFAA defines EFOs to include charitable institutions, food banks, hunger centers, soup kitchens, and similar public or private nonprofit eligible recipient agencies that provide commodities to needy persons.

Since the authority for the donation of these additional commodities is found in the TEFAA, the distribution of the section 214 commodities is subject to the TEFAP regulations found at 7 CFR part 251. However, in order to clarify the eligibility of EFOs to receive these additional commodities, this rule proposes to add a new paragraph (h) to § 251.4 which specifies the sections of the TEFAA which authorize the donation of commodities under TEFAP.

In addition, section 105(c) of the Act amends section 203B(a) of the TEFAA to give States the option to give priority to existing food bank networks and other organizations whose ongoing primary

function is to facilitate the distribution of food to low-income households by authorizing States to give priority to such organizations when allocating TEFAP commodities within the State. Section 251.4(h), as proposed in this rule, includes this provision.

Soup Kitchens/Food Banks

Section 110(c) of the Act requires the Secretary to spend \$40 million to purchase, process and distribute commodities in Fiscal Years 1989 and 1990 and \$32 million in Fiscal Year 1991. The law authorizes the distribution of these commodities to soup kitchens and food banks in addition to the commodities otherwise made available to these organizations.

In section 110(b)(3), the law defines "food banks" as public and charitable institutions that maintain an established operation involving the provision of food or edible commodities, or the products thereof, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that provide meals or food to needy persons on a regular basis as an integral part of their normal activities. In section 110(b)(6), the law defines "soup kitchens" as public and charitable institutions that maintain an established feeding operation to provide food to needy homeless persons on a regular basis as an integral part of their normal activities. The distribution of commodities purchased under section 110 is limited to soup kitchens and food banks as defined in the law. Section 110(e)(2)(A) of the law further specifies that in determining the amount of commodities to accept States shall give priority in the distribution of these commodities to institutions that provide "meals" to homeless individuals.

It should be noted that section 110 does not amend the TEFAA, unlike the other commodity provisions of the Hunger Prevention Act, and therefore the distribution of commodities under this section are not directly a part of TEFAP. Instead, food banks and soup kitchens that receive section 110 commodities will be treated as charitable institutions under the Food Distribution Program Regulations (part 250). In order to address the special requirements for the section 110 commodities, this rule proposes to add a new paragraph (d) to § 250.41.

Section 250.41(d) proposes to require distributing agencies to make commodities purchased under section 110 available to soup kitchens and food banks and to give priority to institutions that provide meals to the homeless. The definitions of "soup kitchens" and "food banks" as contained in the Act have

also been incorporated into § 250.41(d) of this proposed rule. Proposed § 250.41(d) also sets forth the special conditions which apply to the distribution of Section 110 commodities by soup kitchens and food banks.

Like all charitable institutions, soup kitchens and food banks must enter into a written agreement with the distributing agency in accordance with § 250.41(a)(1) before receiving any commodities. However, in recognition of the special nature of soup kitchens and food banks, this proposed rule contains two modifications to the agreement requirements found in § 250.41(a)(1). The first exception involves the requirement for verification of tax-exempt status and the second the method for determining the number of needy persons served.

Charitable institutions are currently required by § 250.14(a) to provide verification of the institution's tax-exempt status under the Internal Revenue Code. With the increase in the number of homeless in various parts of the country, community efforts to provide assistance to these individuals through the establishment of institutions, such as soup kitchens, are increasing. Given the amount of time necessary for the review and approval of requests by the Internal Revenue Service (IRS) and the Department's desire to encourage these community efforts, § 250.41(d)(2)(ii) and (3)(ii) propose to provide a one year grace period for soup kitchens and food banks to allow them an opportunity to obtain recognition of tax-exempt status. However, in order to be eligible to receive section 110 commodities, such as soup kitchens and food banks must have made application to the IRS for recognition of tax-exempt status and must immediately notify the distributing agency if the application is denied. However, if recognition of tax-exempt status has not been obtained within 12 months of filing the application, the distributing agency must terminate participation until such time as recognition of tax-exempt status is obtained or the soup kitchen/food bank provides verification that it has made good faith efforts to obtain such recognition of status and that such status has not been provided due to no fault of the organization. In such cases it is proposed to be the responsibility of the soup kitchen or food bank to document that it has complied with all IRS requirements and supplied all information requested by the IRS.

In order to determine the number of needy persons served, § 250.41(a)(1)(v) of the current part 250 regulations requires charitable institutions to submit

data to the distributing agency that shows the number of needy persons receiving benefits under another means-tested program or financial data that shows the total annual amount of funds received by the institution that are derived from subsidized and nonsubsidized income. The distributing agency must determine the number of needy persons being served based on the data submitted by the charitable institution.

The Department recognizes that soup kitchens, unlike other types of charitable institutions such as hospitals, have been established for the specific purpose of providing assistance to the indigent. Given the nature of these institutions and the Department's desire to reduce unnecessary paperwork burdens, the Department believes that it is reasonable to assume that individuals seeking a prepared meal in a soup kitchen are in need of assistance. Therefore, § 250.41(d)(2)(iii) as proposed in this rulemaking requires that soup kitchens only report the number of meals expected to be served daily (rather than the more detailed formula required for other charitable institutions).

For the same reasons, § 250.41(d)(3)(iii) proposes to require the number of needy persons served by a food bank to be equal to the number of meals served daily by institutions receiving commodities from the food bank plus the number of eligible households served by institutions receiving commodities from the food bank. Household eligibility must be determined using the eligibility criteria established by the State pursuant to § 251.5(b) of the TEFAP regulations.

Section 250.41(d)(4)(iii) proposes to require that the distributing agency use the data reported in the agreement by soup kitchens and food banks to allocate commodities in a manner that ensures that commodities will not be made available in quantities that are in excess of anticipated use or the ability of the organization to accept and store the commodities.

As required by the statute, § 250.41(d)(1) proposes to require the State to give priority in the distribution of section 110 commodities to institutions that provide meals to the homeless. States may use organizations, such as food banks, to distribute these commodities to soup kitchens. In instances in which the amount of commodities made available exceeds the needs of soup kitchens and food banks serving soup kitchens within the State, the law permits the State to make the commodities available to "food

banks" (as defined in section 110(b)(3) of the Act and § 250.41(d)(3) of the regulations).

Distributing agencies should note that this definition does not permit all food banks to be eligible to receive these commodities. Only those food banks which meet the strict definition of the Act may receive them. Food banks which meet this definition are limited to those which provide food to other food banks, soup kitchens, *etc.* and not directly to individuals. For those instances in which food banks do make section 110 commodities available to organizations for household distribution, § 250.41(d)(3)(iii) of the rule proposes to require the agreement to contain an assurance that distribution of these commodities will be limited to those households that meet the TEFAP eligibility criteria in § 251.5(b) and that the distribution will be in accordance with § 251.10(f) concerning limitation on unrelated activities.

Allocation

Sections 104 and 110 of the Act require the Secretary to allocate the additional commodities to States for both TEFAP and soup kitchen/food banks on the basis of a formula that compares each State's population of low-income and unemployed persons to the national statistics. The formula is weighted as follows: (1) 60 percent of the total value of additional commodities provided to States must be based on the number of persons in households within the State which have incomes below the poverty line; and (2) 40 percent of the total value of additional commodities provided to States must be based on the average monthly number of unemployed persons within the State. This is the same as the formula currently used to allocate TEFAP commodities to States except that these allocations will be adjusted annually rather than semi-annually.

Section 250.41(d)(4)(i) of this proposed rule incorporates the formula as set forth in the Act. The wording of § 251.3(d), which sets forth the current formula for allocating TEFAP commodities, has been revised to more closely follow the wording of the law. This change in wording will not have any effect on the manner in which surplus commodities are allocated in TEFAP. Proposed § 251.3(d) is also amended to clarify that surplus commodities distributed under TEFAP will continue to be allocated based on the amount of commodities in pounds, while the purchased commodities will be allocated based on dollar value (as required by section 214(f) of the

TEFAA). In addition, § 251.7(a) of the TEFAP regulations is proposed to be amended to provide that the allocation formula for the \$120 million of purchased commodities will be adjusted once a year while the allocation formula for surplus commodities will continue to be adjusted semi-annually. This difference is necessary to comply with the mandate in section 214(f) of the TEFAA which provides that in each fiscal year the Secretary shall allot the purchase commodities in accordance with the 60/40 formula.

Reallocation

In instances in which a State determines that it will not accept all of its allocation of the \$120 million worth of additional commodities for TEFAP, section 214(g) of the TEFAA requires the Department to reallocate these commodities on the basis of the same 60-40 formula that is used for the initial allocation. The proposed definition of formula in § 251.3(d) has been expanded to include this reallocation requirement.

In instances in which a State determines that it will not accept all of its allocation of the section 110 commodities for soup kitchen/food banks commodities, section 110(e) of the Act requires the Department to reallocate these commodities in a fair and equitable manner among States that accept the full amount of their allocation and request additional amounts. Section 250.41(d)(4)(iv) of this proposed rule incorporates this reallocation principle.

Notification

Section 204(f) of the TEFAA and section 110(e) of the Act require the Secretary to notify each State of the amount of the allocation that the State is entitled to receive. Each State must then promptly notify the Secretary if it will not accept the full amount of the allocation. Upon notification by a State that the full allocation will not be accepted, the Department must reallocate the commodities.

So that such reallocations can be made and deliveries can be arranged in a timely manner, §§ 251.4(c)(3) and 250.41(d)(4)(ii) are added by this proposed rule to require State agencies to notify the Department of the amount of the commodities which they will accept at least 30 days prior to the shipping period.

Maintenance of Effort

Section 214(i) of TEFAA, as added by section 104 of the Act, prohibits a State which uses its own funds to provide commodities or services to organizations receiving funds or services under that section from

diminishing the level of support it provides to such organizations or from reducing the amount of funds available for other nutrition programs in the State in each fiscal year. Section 251.10(h) as added by this proposed rule incorporates this prohibition.

Section 110(h)(3) of the Act requires local agencies receiving commodities purchased under that section to provide assurance to the State that donations of food stuffs from other sources shall not be diminished as a result of the receipt of section 110 commodities. Consequently, § 250.41(d)(6) of this proposed rule requires that distributing agencies obtain assurance, from each institution prior to making commodities available, that food donations from other sources will not be diminished as a result of commodities being made available under section 110. This assurance must be in written form and maintained by the distributing agency.

Funds

Allowable Costs

Storage and Distribution Costs of Additional Commodities

Section 204(c)(1) of the TEFAA (as amended by section 105 of the Act) authorizes States and EFOs to use TEFAP administrative funds for the storage, handling, and distribution of the commodities being made available under section 214 of TEFAA and section 110 of the Hunger Prevention Act.

For TEFAP State agencies and EFOs with TEFAP agreements, no change to the regulations is necessary. However, in order to receive TEFAP administrative funds for costs associated with the distribution of section 110 commodities, this proposed rule would require soup kitchens and food banks to enter into a TEFAP agreement. This will mean that soup kitchens and food banks will be considered charitable institutions for the purpose of receiving section 110 commodities, but will be considered EFOs for the purpose of receiving TEFAP funds, and therefore must follow the part 250 regulations with respect to the distribution of commodities and the part 251 regulations with respect to the use of funds.

The Department believes that this arrangement will ensure accountability by applying the same requirements for the use of all TEFAP funds, whether used by traditional TEFAP EFOs or soup kitchens/food banks. In addition, this will mean that funds provided to soup kitchens and food banks may be counted toward the amount of TEFAP funds a State agency is required to pass through to EFOs.

The Department will be making all TEFAP administrative funds available only to the TEFAP State agencies. In instances in which the State agency responsible for TEFAP is not the agency that is responsible for the distribution of section 110 commodities, this proposed rule would require the TEFAP State agency to enter into an agreement for the receipt and allocation of the TEFAP funds with either: (1) The soup kitchens or food banks; or (2) with the distributing agency responsible for the distribution of the section 110 commodities which will then enter into the TEFAP agreements with the soup kitchens and food banks. The TEFAP agreement may be in the form of the separate TEFAP agreement currently used for EFOs or an amendment to the charitable institution agreement which references the funds-related requirements contained in § 251.8 of the TEFAP regulations. Sections 250.41(d)(5) and 251.8(d)(1) as added by this proposed rule include these requirements.

In instances in which the State agency responsible for TEFAP is not the same agency that is responsible for distribution of the section 110 commodities, it will be up to the two State agencies to determine how to allocate TEFAP administrative funds between the State agencies and among the EFOs, including any soup kitchens/food banks with TEFAP agreements. To ensure proper monitoring of the dissemination of TEFAP funds within the State, § 251.6(a)(4) has been added by this proposed rule to require the TEFAP State agency to describe in the State Plan how these funds will be allocated between State agencies and among EFOs, including soup kitchens and food banks receiving section 110 commodities. In instances in which the allocation of these funds cannot be mutually agreed upon by the State agencies, the Department anticipates that the decision will be made by the Governor's office. The TEFAP State agency will also be required by proposed § 251.10(e)(7) to ensure that EFOs receiving funds for distribution of section 110 commodities are complying with § 251.8.

Storage and Distribution Costs for Non-USA Commodities

Section 102 of the Act adds a new section 203D(b) to the TEFAA which authorizes States and EFOs to use funds made available under the TEFAA to pay costs incurred for the storage and distribution of commodities which have been donated by persons or entities other than USDA. This new section of

the TEFAA also requires that the Secretary establish procedures which allow these non-USDA commodities to be used to supplement USDA commodities.

In accordance with this provision, § 251.8(d)(1) as amended by this proposed rule permits State agencies and EFOs to use TEFAP funds for the storage and distribution of non-USDA donated commodities. However, in order to ensure that these funds are properly used, these proposed regulations limit the dissemination of funds to only those EFOs that have entered into a TEFAP agreement which requires that all fund expenditures comply with § 251.8.

Since under this proposed rule, soup kitchens and food banks which receive section 110 commodities are considered EFOs with respect to the receipt of TEFAP funds, these institutions may use their TEFAP funds for the costs of storing and distributing all the food they handle, including any other USDA commodities donated to them as charitable institutions.

Section 203(D)(a) of the TEFAA, as added by section 102 of the Act, requires the Secretary to establish procedures for the distribution of non-USDA commodities. Section 251.4(i) as added by this proposed rule permits EFOs to distribute non-USDA commodities either in conjunction with or separate from the distribution of USDA commodities.

Costs of Providing Information to Recipients

Section 103(c) of the Act amends section 204(c)(2) of the TEFAA to permit EFOs to use funds provided under TEFAA to cover the costs of providing information to persons participating in TEFAP concerning the appropriate storage and preparation of USDA commodities. This proposed rule adds § 251.8(d)(3) to implement that provision.

Local Support

Section 103(b) of the Act amends section 204(c)(2) of the TEFAA to increase the percentage of Federal TEFAP administrative funds which must be made available to EFOs from 20 percent to 40 percent. Thus, this proposed rule amends § 251.8(d)(2) to require that State agencies, at a minimum, make 40 percent of the Federal administrative funds available to EFOs.

The Department has recently been made aware of some problems relating to the TEFAP funding provision. First, there has been some confusion regarding the use of "State funds" in § 251.8(d)(2)(i). As used in this section,

"State funds" refers to those TEFAP administrative funds which are retained by the State agency to pay State-level storage and distribution costs. In order to avoid confusion in the future, this proposed rule revises § 251.8(d)(2)(i) to incorporate the term "Federal TEFAP administrative funds" in lieu of "State funds." This clarification will ensure that 40 percent of the Federal grant is passed through to or expended on behalf of emergency feeding organizations.

The second area of concern involves the limitation on the types of State expenditures which qualify to meet the matching requirements for TEFAP. Section 204(c)(4) of the TEFAA requires States to match the portion of Federal TEFAP funds which are retained by the State to pay State-level storage and distribution costs and prohibits States from passing the cost of the matching requirements on to EFOs. When implementing this requirement at § 251.9 of the current regulations, the Department limited the types of contributions which may count toward the match to contributions (cash or in-kind) for costs which could otherwise be allowable as State-level storage and distribution costs. It has since been pointed out that this provision does not permit State agencies to count toward the match any State appropriated funds which are used to pay local storage and distribution costs or any in-kind contributions made by the State agency to an emergency feeding organization. The Department has since re-evaluated this provision together with the Department-wide rules describing allowable contributions toward matching requirements. Based on this review, the Department believes that this provision should be revised in order to be more consistent with the TEFAA provisions and Departmental grant regulations. Therefore, this rule proposes to revise § 251.9(c) to eliminate the restriction that any contributions must be limited to State-level storage and distribution costs. Instead, the provision allows the following distributions be counted toward a match, a State agency cash contribution for a cost that would otherwise be an allowable use of TEFAP administrative funds (i.e., either State-level or local-level storage and distribution costs), in-kind contribution for State-level costs and State agency in-kind contributions toward a local-level cost. However, the limitation on passing on the costs of the matching requirement to EFOs remains, and therefore, EFO expenditures to cover their storage and distribution costs and in-kind contributions by parties other than the State agency may not be counted toward the match.

This proposed rule would amend §§ 251.9(c) and 251.10(a)(2) to correct references to the Department's Uniform Federal Assistance Regulations. Previously, all grant programs were governed by regulations at 7 CFR part 3015. However, on March 11, 1988 new regulations were published at 7 CFR part 3016 which cover all USDA grants except open-ended entitlements. Accordingly, the references to part 3015 in the matching and recordkeeping sections of the TEFAP regulations have been changed to part 3016 and the language describing these provisions has been revised as necessary.

Finally, this proposed rule would also revise § 251.10(d) to make reference to FNS Form 667, Report of Storage and Distribution Costs (TEFAP). Section 250.1(d) of the current regulations requires State agencies to report their outlays and unliquidated obligations for program costs on the Standard Form (SF) 269, Financial Status Report. However, the revised SF-269 has been determined inappropriate for program needs because it does not lend itself to separately identifying the State and local level components of total program cost. Accordingly, FNS has obtained OMB approval for the use of FNS Form 667, Report of Storage and Distribution Costs (TEFAP) in accordance with procedures established under the Paperwork Reduction Act of 1980. Use of FNS Form 667 has been implemented under 7 CFR 3016.41(a). It should be noted that there has been a change in the form only, and that no new reporting requirements are being added.

Volunteer Workers

Section 203(D)(c) of the TEFAA as added by section 102 of the Act requires States and EFOs, to continue to the maximum extent practicable, to use volunteer workers and commodities and other foodstuffs donated by charitable and other organizations in the operation of the Temporary Emergency Food Assistance Program. This proposed rule adds § 251.10(g) which incorporates this requirement.

Distribution Charges

Section 208 of the TEFAA prohibits State agencies from charging recipient agencies any fees in connection with the distribution of USDA-donated commodities which are in excess of the State's direct storage and transportation costs less any funds provided by USDA for that purpose. This provision is included in § 250.15(a)(2) of the Food Distribution Program Regulations, together with a reference to the effective dates of that provision. This prohibition

was extended as part of the extension of the TEFAA. Rather than again changing the date in regulations, this proposed rule amends § 250.15(a)(2) to delete the specific date reference so as to avoid future regulatory amendments due to extension of the legislation.

State Monitoring System

This proposed rule revises § 251.10(e) to require that soup kitchens/food banks which receive TEFAP funds under § 250.41 be included in the TEFAP State agency's monitoring system. While the TEFAP State agency may delegate this responsibility to the distributing agency responsible for charitable institutions when they are not the same agency, the TEFAP State agency retains the ultimate responsibility for ensuring that the review requirements are met.

In the past, substantial amounts of the surplus commodities distributed through the Temporary Emergency Food Assistance Program have been depleted. This reduction has created a need for many distribution sites to change their distribution schedules and/or increase the percentage of non-USDA foods distributed. Consequently, the Department has received many requests from States and EFOs to reduce the currently required annual State agency reviews of all EFOs. The Department agrees that the reduction in the volume of available USDA commodities necessitates a reduction in the monitoring burden imposed upon State agencies and EFOs. Therefore, § 251.10(e) is proposed to be revised to reduce the number of required State agency reviews of EFOs to a 25 percent per year requirement. In other words, State agencies will review all EFOs over a four year period. Unlike most portions of this rule which are mandated by the Act, the Department has used its discretionary authority to propose a revision to this portion of the regulation. Therefore, comments and recommendations are especially solicited on this change.

Deletion of Obsolete Provision

In 1987, section 812 of the Stewart B. McKinney Homeless Assistance Act added a new section 202A to the TEFAA. This section authorized the distribution of additional quantities of flour, cornmeal, and cheese during Fiscal Year 1988, subject to certain conditions. This provision was subsequently added to the TEFAP regulations at § 251.4(d)(3). Since section 202A has now expired, this rule proposes to delete the now obsolete provision at the end of § 251.4(d)(3).

List of Subjects

7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Indians, Infants and children, Price support programs, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 251

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Grant programs-social programs, Indians, Infants and children, Prices support programs, Reporting and Recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

Accordingly, 7 CFR parts 250 and 251 are proposed to be amended as follows:

PART 250—DONATION OF FOOD FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 is revised to read as follows:

Authority: Sec. 32, Pub. L. 74-320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75-165, 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, Pub. L. 79-396, 60 Stat. 231, 233 (42 U.S.C. 1755, 1758); Sec. 416, Pub. L. 81-439, 63 Stat. 1058 (7 U.S.C. 1431); Sec. 402, Pub. L. 91-665, 68 Stat. 843 (22 U.S.C. 1922); Sec. 210, Pub. L. 84-540, 70 Stat. 202 (7 U.S.C. 1859); Sec. 9, Pub. L. 85-931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86-756, 74 Stat. 899 (7 U.S.C. 1431 note); Sec. 709, Pub. L. 89-321, 79 Stat. 1212 (7 U.S.C. 1446a-1); Sec. 3, Pub. L. 90-302, 82 Stat. 117 (42 U.S.C. 1761); Secs. 409, 410, Pub. L. 93-288, 88 Stat. 157 (42 U.S.C. 5179, 5180); Sec. 2, Pub. L. 93-326, 88 Stat. 286 (42 U.S.C. 1762a); Sec. 16, Pub. L. 94-105, 89 Stat. 522 (42 U.S.C. 1766); Sec. 1304(a), Pub. L. 95-113, 91 Stat. 980 (7 U.S.C. 612c note); Sec. 311, Pub. L. 95-478, 92 Stat. 1533 (42 U.S.C. 3030a); Sec. 10, Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); Sec. 1114(a), Pub. L. 97-98, 95 Stat. 1269 (7 U.S.C. 1431e); Title II, Pub. L. 98-8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301); Pub. L. 100-237, 101 Stat. 1733 (Pub. L. 612 note); Pub. L. 100-435, 102 Stat. 1645 (7 U.S.C. 612c note).

2. Section 250.41 is amended by adding paragraph (d) to read as follows:

§ 250.41 Charitable Institutions.

* * * * *

(d) *Soup Kitchens/Food Banks.* (1) In addition to the donated food made available in paragraph (c) of this section to charitable institutions which meet the criteria contained in paragraph (a) of this section, distributing agencies shall make commodities donated to the State under section 110 of the Hunger

Prevention Act of 1988 available to soup kitchens and food banks, as defined below. In distributing such commodities the distributing agency shall give priority to institutions that provide meals to homeless individuals, e.g., soup kitchens and food banks serving soup kitchens.

(2) Soup Kitchens. Soup kitchens shall meet the following criteria to receive such commodities:

(i) Be a public or charitable institution that maintains an established feeding operation to provide food to needy homeless persons on a regular basis as an integral part of its normal activities;

(ii) Have obtained tax-exempt status under the Internal Revenue Code, or have made application for such status and be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. If the Internal Revenue Service (IRS) denies the application for tax-exempt status, the soup kitchen shall immediately notify the distributing agency of such denial and the distributing agency shall terminate participation. If IRS certification of nonprofit status has not been received within 12 months of filing the application, the distributing agency shall terminate participation of the soup kitchen until such time as IRS tax-exempt status is obtained or the soup kitchen provides verification that it has made good faith efforts to obtain tax-exempt status and that such status has not been provided due to no fault of the soup kitchen. It shall, however, be the responsibility of the soup kitchen to document that it has complied with all IRS requirements and has provided all information requested by IRS; and

(iii) Enter into an agreement with the distributing agency in accordance with paragraph (a) of this section except that the number of needy to be served shall be determined by projecting the average number of meals served daily during the agreement period.

(3) Food banks. Food banks shall meet the following criteria to receive such commodities:

(i) Be a public or charitable institution that maintains an established operation involving the provision of food or edible commodities, or the products thereof, to food pantries, soup kitchens, hunger relief centers, or other food or feeding centers that provide meals or food to needy persons on a regular basis as an integral part of their normal activities;

(ii) Have obtained tax-exempt status under the Internal Revenue Code, or have made application for such status and be moving toward compliance with

the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. If the Internal Revenue Service (IRS) denies the application for tax-exempt status, the food bank shall immediately notify the distributing agency of such denial and the distributing agency shall terminate participation. If IRS certification of nonprofit status has not been received within 12 months of filing the application, the distributing agency shall terminate participation of the food bank until such time as IRS tax-exempt status is obtained or the food bank provides verification that it has made good faith efforts to obtain tax-exempt status and that such status has not been provided due to no fault of the food bank. It shall, however, be the responsibility of the food bank to document that it has complied with all IRS requirements and has provided all information requested by IRS; and

(iii) Enter into an agreement with the distributing agency in accordance with paragraph (a) of this section except that:

(A) The number of needy persons to be served in a congregate meal setting shall be determined by projecting the average number of meals to be served daily during the agreement period;

(B) The number of needy households to be provided food for home consumption shall be determined by projecting the number of households to be served during the agreement period (in accordance with the method set by the distributing agency) which meet the eligibility criteria established by the State pursuant to 7 CFR 251.5(b); and

(C) In instances in which the donated food will be made available for household distribution, a requirement that the food bank shall ensure that organizations receiving the donated food from the food bank will comply with 7 CFR 251.10(f) and will distribute the donated food only to households which meet the State's eligibility criteria established pursuant to 7 CFR 251.5(b).

(4) Allocations of donated foods. (i) Donated food purchased under section 110 of the Hunger Prevention Act of 1988 will be allocated to States by the Department on the basis of a formula that compares each State's population of low-income and unemployed persons to the national statistics. Each State's share of commodities, as measured by their value, shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The Department will notify each State of the types and the amount of such commodities that it is allotted

under the formula once funds are appropriated for such purchases. The Department will make annual adjustments to the commodity allocations for each State, based on updated unemployment statistics, which will be effective for the entire fiscal year, subject to reallocation or transfer in accordance with this part:

(ii) The distributing agency shall notify the appropriate FNSRO of the amount of the donated food it will accept no later than 30 days prior to the shipping period;

(iii) The distributing agency shall use the data reported in the agreement by soup kitchens and food banks to determine the number of meals served to needy persons and number of needy households being served to allocate the donated food in a manner that ensures that commodities will not be made available in quantities that are in excess of anticipated use or the ability of the organization to accept and store the commodities; and

(iv) In instances in which a State determines that it will not accept its full allocation, the Department will reallocate these commodities in a fair and equitable manner among those States that accept the full amount of their allocations and request additional amounts.

(5) Funding. State agencies may make funds available to soup kitchens and food banks receiving section 110 commodities. Prior to receiving any available funds, the institution shall enter into an agreement in accordance with 7 CFR 251.8(d) (1).

(6) Maintenance of effort. The distributing agency shall obtain written assurance from soup kitchens and food banks that food donations from other sources will not be diminished as a result of donated foods being made available under section 110 of the Hunger Prevention Act of 1988. This assurance statement shall be maintained by the distributing agency.

PART 251—TEMPORARY EMERGENCY FOOD ASSISTANCE PROGRAM

1. The part heading is revised as shown above.

1a. The authority citation for part 251 is revised to read as follows:

Authority: Pub. L. 98-8, as amended (7 U.S.C. 612c note); Pub. L. 100-435, 102 Stat. 1645 (7 U.S.C. 612c note).

2. Section 251.3 is amended by revising paragraph (d) to read as follows:

§ 251.3 Definitions.

* * * * *

(d) *Formula* means the formula used by the Department to allocate among States the commodities and funding available under this part. The amount of such commodities and funds to be provided to each State will be based on each State's population of low-income and unemployed persons, as compared to the national statistics. Each State's share of commodities and funds shall be based 60 percent on the number of persons in households within the State having incomes below the poverty level and 40 percent on the number of unemployed persons within the State. The surplus commodities shall be allocated to States on the basis of their weight (pounds) and the commodities purchased under section 214 of the Temporary Emergency Food Assistance Act (TEFAA) of 1983 shall be allocated on the basis of their value (dollars). In instances in which a State determines that it will not accept the full amount of its allocation of commodities purchased under section 214 of the Temporary Emergency Food Assistance Act of 1983, the Department will reallocate the commodities to other States on the basis of the same 60/40 formula used for the initial allocation.

3. Section 251.4 is amended as follows:

a. A new (c)(3) is added to read as follows:

b. Paragraph (d)(3) is amended by removing everything after the first sentence;

c. Existing paragraphs (h), (i) and (j) are redesignated (j), (k) and (l); and

d. New paragraphs (h) and (i) are added to read as follows.

§ 251.4 Availability of commodities.

* * * * *

(c) *Allocations.* * * * (3) State agencies shall notify the appropriate FNSRO of the amount of the commodities they will accept no later than 30 days prior to the shipping period.

* * * * *

(h) *Distribution to Emergency Feeding Organizations.* Emergency feeding organizations are eligible to receive commodities which are made available under sections 202, 201A, and 214 of the Temporary Emergency Food Assistance Act of 1983, as amended. State agencies may give priority in the distribution of these commodities to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households, including food from sources other than the Department.

(i) *Distribution of non-USDA foods.* Emergency feeding organizations may

incorporate the distribution of foods which have been donated by charitable organizations or other entities with the distribution of USDA-donated commodities or distribute them separately.

4. Section 251.6, paragraph (a)(4) is revised to read as follows:

§ 251.6 Distribution plan.

(a) *Contents of the plan.* * * * (4) A description of the State's formula for allocating funds among State agencies and emergency feeding organizations, including soup kitchens and food banks receiving funds for the storage, handling, and distribution of commodities which are made available under section 110 of the Hunger Prevention Act of 1988; and

5. Section 251.7, paragraph (a) is revised to read as follows:

§ 251.7 Formula adjustments.

(a) *Commodity adjustments.* The Department will make adjustments to the commodity allocation formula for each State, based on updated unemployment statistics, as follows:

(1) *Surplus commodities.* Adjustments will be made semi-annually effective on January 1 and July 1 of each fiscal year; and

(2) *Purchased commodities.* Adjustments will be made annually and will be effective for the entire fiscal year, subject to reallocation or transfer in accordance with this part.

6. Section 251.8, is amended by revising paragraph (d) to read as follows:

§ 251.8 Payment of funds for storage and distribution costs.

(d) *Use of funds.* (1) Funds made available under this Part shall be used by States agencies or emergency feeding organizations for costs incurred in the storage and distribution of commodities made available under this part. Funds made available under this Part may also be used to pay costs incurred for the storage and distribution of commodities made available under section 110 of the Hunger Prevention Act of 1988. In instances in which funds are made available for the storage and distribution of section 110 commodities and the State agency responsible for the distribution of Temporary Emergency Food Assistance Program commodities and funds is not the same agency responsible for the distribution of section 110 commodities, the Temporary Emergency Food Assistance Program State agency shall enter into an agreement with either the soup kitchens/food banks (as defined in

§ 250.41(d) of this chapter) requesting the funds; or with the State agency responsible for the distribution of the section 110 commodities which will then enter into an agreement with those soup kitchens and food banks. The agreement with the soup kitchen or food bank shall require compliance with the provisions contained in this section and in § 251.10(a) and (e). Funds made available under this part may be used by emergency feeding organizations, which have entered into an agreement for the receipt of donated foods made available under this Part or under Section 110 of the Hunger Prevention Act of 1988, to also cover the costs associated with the storage and distribution of non-USDA commodities.

(2)(i) State agencies shall provide to emergency feeding organizations not less than 40 percent of the Federal Temporary Emergency Food Assistance Program funds allocated in accordance with paragraph (a) of this section to pay for or provide advance payments to cover storage and distribution costs incurred by emergency feeding organizations. Federal Temporary Emergency Food Assistance Program funds retained at the State level that are expended directly by the State agency for costs identified with emergency feeding organization storage and distribution costs may be counted toward meeting the 40 percent requirement; and

(ii) State agencies shall not charge for commodities made available to emergency feeding organizations.

(3) Emergency feeding organizations may use funds to pay costs incurred for providing information to recipients relative to the appropriate storage and preparation of USDA commodities.

7. Section 251.9, is amended by revising paragraphs (a) and (c) to read as follows:

§ 251.9 Matching of funds.

(a) *State matching requirement.* The State shall provide a cash or in-kind contribution to equal the amount of the Federal allocation received under § 251.8 and retained by the State agency for State level costs. Any portion of the Federal grant passed through for storage and distribution costs incurred at the local level or directly expended by the State agency for such local level costs is exempt from the State match requirement.

(c) *Applicable contributions.* States shall meet the requirements of paragraph (a) of this section through cash or in-kind contributions from non-

Federal sources. Such contributions shall meet the requirements set forth in 7 CFR 3016.24. In accordance with 7 CFR 3016.24(b)(1), the matching requirement shall not be met by costs supported by another Federal grant, except as provided by Federal statute. Allowable contributions are only those contributions for costs which would otherwise be allowable as State or local-level storage and distribution costs.

(1) *Cash.* An allowable cash contribution is any cash outlay of the State agency specifically identifiable as an allowable State or local-level storage and distribution cost, including the outlay of money contributed to the State agency by other public agencies and institutions, and private organizations and individuals. Examples of cash contributions include, but are not limited to, the purchase of office supplies, storage space, transportation, loading facilities and equipment, employees' salaries, and other goods and services specifically identifiable as State or local-level storage and distribution costs for which there has been a cash outlay by the State agency.

(2) *In-kind.* Allowable in-kind contributions are any charges, which are non-cash outlays, for real property and non-expendable personal property and the value of goods and services specifically identifiable with allowable State storage and distribution costs or, when contributed by the State agency to an emergency feeding organization, allowable local-level storage and distribution costs. Examples of in-kind contributions may include, but are not limited to, the donation of office supplies, storage space, vehicles to transport the commodities, loading facilities and equipment such as pallets and forklifts, and other non-cash goods or services specifically identifiable with allowable State storage and distribution costs or, when contributed by the State agency to an emergency feeding organization, allowable local-level storage and distribution costs. In-kind contributions shall be valued in accordance with 7 CFR 3016.24(c) through 3016.24(f).

7. Section 251.10 is amended by:

- Removing "3015" and adding instead "3016" in paragraph (a)(2);
- Revising the third sentence in paragraph (d)(1) to read as follows;
- Revising paragraph (e) (2) (i);
- Adding a new paragraph (e) (7); and
- Adding new paragraphs (g) and (h) to read as follows:

251.10 Miscellaneous provisions.

(d) *Reports.* (1) * * * The data shall be identified on FNS Form 667, Report of Storage and Distribution Costs (TEFAP) and shall be submitted to the appropriate FNS Regional Office on a quarterly basis. * * *

(e) *State monitoring system.* * * * (2) * * * (i) a review of all emergency feeding organizations within the State every four years of which a minimum of 25 percent shall be conducted each year; and * * *

(7) State agencies shall ensure that emergency feeding organizations which receive funds for the storage, handling and distribution of commodities obtained under section 110 of the Hunger Prevention Act of 1988, are revised to ensure compliance with the provisions contained in § 251.8.

(g) *Use of volunteer workers and non-USA commodities.* In the operation of the Temporary Emergency Food Assistance Program, State agencies and emergency feeding organizations shall, to the maximum extent practicable, use volunteer workers and foods which have been donated by charitable and other types of organizations.

(h) *Maintenance of effort.* The State agency shall ensure that if the State uses its own funds to provide commodities or services to organizations receiving funds or services under section 214 of the Temporary Emergency Food Assistance Act of 1983, the State does not diminish the level of support it provides to such organizations or reduce the amount of funds available for other nutrition programs in the State in each fiscal year.

Dated: March 29, 1990.

Betty Jo Nelson,
Administrator, Food and Nutrition Service.
[FR Doc. 90-7974 Filed 4-5-90; 8:45 am]
BILLING CODE 3410-30-M

Agricultural Marketing Service**7 CFR Parts 921, 922, 923 and 924**

[Docket No. FV-90-142PR]

Proposed 1990-91 Fiscal Year Expenditures and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates for the 1990-91 fiscal

year (April 1-March 31) under Marketing Order Nos. 921, 922, 923 and 924. These expenditures and assessment rates are needed by the marketing committees established under these marketing orders to pay marketing order expenses and collect assessment from handlers to pay those expenses. The proposed action would enable these committees to perform their duties and the orders to operate.

DATES: Comments must be received by June 11, 1990.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the *Federal Register*.

FOR FURTHER INFORMATION CONTACT:

Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order Nos. 921 [7 CFR part 921] regulating the handling of fresh peaches grown in designated counties in Washington; 922 [7 CFR part 922] regulating the handling of apricots grown in designated counties in Washington; 923 [7 CFR part 923] regulating the handling of cherries grown in designated counties in Washington; and 924 [7 CFR part 924] regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of

business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 65 handlers of Washington peaches, 60 handlers of Washington apricots, 85 handlers of Washington cherries, and 40 handlers of Washington-Oregon prunes subject to regulation under their respective marketing orders. In addition, there are about 390 Washington peach producers, 190 Washington apricot producers, 1,115 Washington cherry producers and 375 Washington-Oregon prune producers in their respective production areas. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipt of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of these handlers and producers may be classified as small entities.

These marketing orders, administered by the U.S. Department of Agriculture (Department), require that assessment rates for a particular fiscal year shall apply to all assessable fresh fruit handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee and submitted to the Department for approval. The members of these committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each committee is derived by dividing anticipated expenses by the tons of fresh fruit expected to be shipped under the order. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be

expedited so that the committees will have funds to pay their expenses.

The Stone Fruit Executive Committee (SFEC) met on March 8, 1990, and unanimously recommended the following 1990-91 fiscal year expenditures and assessment rates for these marketing orders. The SFEC is made up of officers of the four stone fruit marketing committees established under these orders. The SFEC's recommendations are based upon the information available to it very early in the season pertaining to the anticipated 1990 season shipments and expenses, and projected reserve fund levels.

The stone fruit marketing committees' proposed 1990-91 budgets are similar in scope and size to those approved for 1989-90. The proposed expenditures are for marketing order administration, which includes employees' salaries and travel, office operations, and miscellaneous costs, along with expenditures for prune research and cherry market development. The stone fruit marketing committees share a joint office and related expenses, based on an arrangement among the committees.

The stone fruit marketing committees have scheduled their annual organizational meetings for next May and early June to review crop and market conditions for the 1990 season. At these meetings they will have an opportunity to recommend any necessary revisions of their 1990-91 budgets and/or assessment rates based on more recent estimates of the crops, expenses, and reserve balances available at that time.

For the Washington Fresh Peach Marketing Committee, the SFEC recommended 1990-91 expenditures of \$18,904, and an assessment rate of \$2.00 per ton of peaches shipped under M.O. 921. In comparison, 1989-90 budgeted expenditures were \$18,615 and the assessment rate was \$1.35 per ton. Assessment income for the 1990-91 fiscal year is estimated at \$22,000 based on a crop estimate of 11,000 tons of peaches.

For the Washington Apricot Marketing Committee, the SFEC recommended 1990-91 expenditures of \$7,027, and an assessment rate of \$3.00 per ton of apricots shipped under M.O. 922. In comparison, 1989-90 budgeted expenditures were \$6,942 and the assessment rate was \$2.00 per ton. Assessment income for the 1990-91 fiscal year is estimated at \$6,000 based on a crop estimate of 2,000 tons of apricots. Committee reserve funds are available to cover the anticipated \$1,027 deficit for the 1990-91 fiscal year.

For the Washington Cherry Marketing Committee, the SFEC recommended

1990-91 expenditures of \$99,608 and an assessment rate of \$3.00 per ton of cherries shipped under M.O. 923. In comparison, 1989-90 budgeted expenditures were \$98,503 and the assessment rate was \$2.00 per ton. Assessment income for the 1990-91 fiscal year is estimated at \$135,000 based on a crop estimate of 45,000 tons of cherries.

For the Washington-Oregon Fresh Prune Marketing Committee, the SFEC recommended 1990-91 expenditures of \$17,711 and an assessment rate of \$2.00 per ton of prunes shipped under M.O. 924. In comparison, 1989-90 budgeted expenditures were \$17,490 and the assessment rate was \$0.80 per ton. Assessment income for the 1990-91 fiscal year is estimated at \$18,000 based on a crop estimate of 9,000 tons of prunes.

This proposed rule provides that comments must be received by June 11, 1990. Extending the comment period until that date will allow all four stone fruit marketing committees to meet and make any necessary adjustments in their proposed 1990-91 expenses and assessment rates prior to issuance of a final rule.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Parts 921, 922, 923 and 924

Apricots, Cherries, Marketing agreements, Peaches, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR parts 921, 922, 923 and 924 be amended as follows:

1. The authority citation for 7 CFR parts 921, 922, 923 and 924 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. A new § 921.229, is added to read as follows:

§ 921.229 Expenses and assessment rate.

Expenses of \$18,904 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of \$2.00 per ton of assessable peaches is established for the fiscal year ending March 31, 1991. Any unexpended funds from the 1989-90 fiscal year may be carried over as a reserve.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. A new § 922.229 is added to read as follows:

§ 922.229 Expenses and assessment rate.

Expenses of \$7,027 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of \$3.00 per ton is established for the fiscal year ending March 31, 1991. Any unexpended funds from the 1989-90 fiscal year may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

4. A new § 923.230 is added to read as follows:

§ 923.230 Expenses and assessment rate.

Expenses of \$99,608 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of \$3.00 per ton is established for the fiscal year ending March 31, 1991. Any unexpended funds from the 1989-90 fiscal year may be carried over as a reserve.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

5. A new § 924.230 is added to read as follows:

§ 924.230 Expenses and assessment rate.

Expenses of \$17,711 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of \$2.00 per ton of assessable prunes is established for the fiscal year ending March 31, 1991. Any unexpended funds from the 1989-90 fiscal year may be carried over as a reserve.

Dated: April 3, 1990.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90-7981 Filed 4-5-90; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1139

(DA-90-012)

Milk in the Great Basin Marketing Area; Notice of Proposed Indefinite Suspension of Certain Provisions of the Order**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to indefinitely suspend a "touch base" requirement where a dairy farmer, who was not a producer under the Great Basin order in the previous month, would not be eligible to have milk diverted to a nonpool plant until after one day's production is received at a pool plant. This action was requested by a cooperative association whose members supply a majority of the milk marketed under the Great Basin order.

DATES: Comments are due on or before April 13, 1990.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provision of the order regulating the handling of milk in the Great Basin marketing area is

being considered beginning April 1990: § 1139.13(d)(6).

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the *Federal Register*. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include April in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

An indefinite suspension of a "touch base" provision applicable to dairy farmers who were not producers the previous month was requested by Western Dairyman Cooperative, Inc. (WDCI), whose members supply a majority of the milk marketed under the Great Basin order. The requested action would remove the requirement that a dairy farmer who was not a producer under the Great Basin order in the previous month will not be eligible to have milk diverted to a nonpool plant until after one day's production is received at a pool plant, effective for April 1, 1990.

WDCI states that this provision has caused considerable inconvenience and unnecessary expense in the movement of milk without any benefit to either the producer members of WDCI or the market in general and has caused the loss of pool participation by producers who are rightfully a part of the reserve supply of milk for the Great Basin market area.

WDCI states that it markets milk for its producers scattered over portions of eleven States under four different Federal milk marketing orders and to several fluid and ungraded milk plants throughout much of the western United States. This, WDCI says, causes them to spread their milk pickup routes over great distances; moreover, these routes must be regularly adjusted for many changing circumstances such as volume, seasonal production variation, and changes in demand for milk at different plants. These factors, WDCI says, are making it next to impossible to follow the status of each dairy farmer that was not a producer the preceding month to make certain that their milk is qualified for diversion, and thus for pooling, as currently called for under the order.

Given the numerous variations in its milk movements, WDCI explains that it does not know until the month is over which day's milk from any individual dairy farm was moved to a pool plant. Even if this information was available before a month's end, WDCI said ensuring delivery of at least one day's production to a pool plant before diverting it to a nonpool plant may not be feasible because of the expense involved.

Finally, WDCI states that this order provision discriminates against them because of the varied services performed for the many plants that WDCI supplies supplemental milk. The milk diverted in excess of fluid needs, or that is shifted from plant to plant, is an integral part of the market's Grade A milk supply and deserves to be pooled under the order, according to WDCI.

List of Subjects in 7 CFR Part 1139

Milk marketing orders.

The authority citation for 7 CFR part 1139 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on April 3, 1990.

Daniel Haley,
Administrator.

[FR Doc. 90-7982 Filed 4-5-90; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service**9 CFR Part 78**

(Docket No. 89-104)

Official Brucellosis Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the brucellosis regulations by adding the particle concentration fluorescence immunoassay (PCFIA) to the list of official tests for brucellosis in swine. We believe this action is warranted in order to allow an alternate method of testing swine that is faster, more sensitive, and more specific than many of the official laboratory tests currently being used.

DATES: Consideration will be given only to comments received on or before May 7, 1990.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 866, Federal

Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 89-104.

Comments received may be inspected in USDA, room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT:

Dr. W.C. Stewart, Chief Staff Veterinarian, Swine Diseases Staff, VS, APHIS, USDA, room 735, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7767.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a serious infectious disease of animals and man caused by bacteria of the genus *Brucella*. The Secretary of Agriculture is authorized to cooperate with the States in conducting a brucellosis eradication program and in preventing the interstate spread of brucellosis in animals. The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the spread of brucellosis.

Official brucellosis tests are used for determining the brucellosis status of cattle, bison, and swine. The regulations stipulate that testing negative to an official brucellosis test is a condition for certain interstate movements of cattle, bison, and swine. Additionally, official tests are used to determine eligibility for indemnity payments for animals destroyed because of brucellosis.

In testing for brucellosis, both "presumptive" and "diagnostic" official tests are conducted. Presumptive tests are preliminary tests that offer greater sensitivity than other tests, because, in addition to identifying more brucellosis-infected animals than other tests, they may also identify animals as positive for other reasons. Animals that test positive to a presumptive test are then tested with a diagnostic test. The diagnostic test usually provides greater specificity than the presumptive test, in that it better distinguishes brucellosis-infected animals from those not infected with brucellosis. In addition to sensitivity and specificity, reproducibility is a factor in the effectiveness of a test. The more often a test yields the same results when conducted on the same sample, the greater its reproducibility.

A new serologic test for the testing of brucellosis in swine, called the particle concentration fluorescence immunoassay (PCFIA), has been

evaluated through field trials in four States and research using swine from the National Animal Disease Center in Ames, Iowa.¹

The PCFIA test, produced by the IDEXX Corporation, Portland, Maine, is already recognized as an official test for brucellosis in cattle and bison. This test affords higher sensitivity than many of the presumptive tests, and has specificity and reproducibility equal to or superior to most official diagnostic tests. Additionally, the PCFIA test is faster than many of those currently being used. Therefore, we are proposing to amend the regulations by adding the PCFIA test to the list of official tests for brucellosis in swine.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It does not appear that this action would have a significant economic impact on a substantial number of small entities, including businesses that produce animal health products, swine producers, and laboratories that would perform the PCFIA test.

Approximately 86,000 swine are tested for brucellosis each year as a prerequisite for interstate movement. The PCFIA test would be only one of several tests available for this purpose. Each State's use of the PCFIA test would depend on the prevalence of swine brucellosis in that State, the frequency of tests given, and the availability of the necessary diagnostic equipment to process the test. Because of these factors, we estimate that considerably fewer than 86,000 PCFIA tests would be

conducted each year for the purpose of qualifying swine for interstate movement.

The PCFIA test's introduction as an official swine brucellosis test could have a positive but modest economic impact on the small entity that produces the test. It does not appear, however, that the PCFIA would present a competitive threat to other businesses engaged in the production of animal health products. We are aware of no other small entities that are involved in the production of materials used in swine brucellosis tests.

It is not anticipated that swine producers would experience a significant economic impact as a result of this action. The estimated cost of each PCFIA test is \$1, including materials, labor, and administrative costs. Assuming exclusive use of the PCFIA, this cost adds up to an expenditure of approximately \$86,000 yearly. This sum translates into an average expenditure of approximately \$29 annually per swine herd owner, since there are an estimated 3,000 swine herd owners nationwide who regularly ship swine interstate for breeding purposes. We do not believe this figure represents a significant impact upon these entities. Introduction of the PCFIA test as an official test for swine brucellosis should therefore have no effect on the market price of the swine tested.

It is not anticipated that State-Federal-approved laboratories opting to work with the PCFIA test would experience a significant financial impact as a result of this action, since the USDA provides them with funding for processing tests.

Additionally, not all State-Federal-approved laboratories would be capable of processing the PCFIA test. Unlike other swine brucellosis tests, the PCFIA test requires the use of a diagnostic machine, which costs approximately \$70,000. The Animal and Plant Health Inspection Service is currently leasing machines to State-Federal-approved laboratories in 14 States. The machines are being used to process PCFIA tests for bovine brucellosis. Due to the cost and limited availability of the machines, only the State-Federal-approved laboratories currently in possession of them may be in a position to use the PCFIA test for swine brucellosis testing.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

¹ Results of the field trials and related research can be obtained by writing to the Administrator, APHIS, c/o Swine Diseases Staff, VS, APHIS, USDA, room 735, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, 9 CFR part 78 would be amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 would continue to read as follows:

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 78.1, the definition of *Official test* would be amended by adding a new paragraph (b)(3) to read as follows:

§ 78.1 Definitions.

Official test.

(b) * * *

(3) Particle concentration fluorescence immunoassay (PCFIA). An automated serologic test to determine the brucellosis disease status of test-eligible swine when conducted according to instructions approved by the Animal and Plant Health Inspection Service. Swine are classified according to the following ratio between the test sample and a known negative sample [S/N ratio]:

S/N Ratio	Classification
0.71 or greater.....	Negative.
0.51 to 0.70	Suspect.
0.50 or less.....	Reactor.

Done in Washington, DC, this 2nd day of April 1990.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90-7983 Filed 4-5-90; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM**12 CFR Part 216**

[Regulation P; Docket No. R-0688]

RIN 7100-AA69**Security Devices and Procedures**

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board of Governors of the Federal Reserve System ("Board"), in coordination with the other bank supervisory agencies, has reviewed Regulation P—Security Devices and Procedures—and determined that it is appropriate to revise the regulation to reflect changes in the technology of security devices, and to implement changes made by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"). The revision incorporates amendments made to the Bank Protection Act of 1968 by FIRREA and provides banks with the flexibility to avoid the technical obsolescence that occurred with the existing regulation.

DATES: Comments should be received by June 4, 1990.

ADDRESSES: Comments, which should refer to Docket No. R-0688, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Norah M. Barger, Senior Financial Analyst (202/452-2402), Division of Banking Supervision and Regulation, Elaine M. Boutilier, Senior Attorney (202/452-2418), Legal Division, or Thomas A. Durkin, Regulatory Planning and Review Director (202/452-2326), Office of the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunication Device for the Deaf ("TDD"), Earnestine Hill or Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION: The Bank Protection Act of 1968 requires the federal financial institution supervisory agencies to establish minimum standards for bank security devices and procedures to discourage bank crime

and to assist in the identification of persons who commit such crimes. 12 U.S.C. 1882. To implement this statute a uniform regulation was adopted in 1969 by each of the supervisory agencies—Comptroller of the Currency, Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (now known as the Office of Thrift Supervision), and the Board. With the exception of minor changes in 1973 and 1981, this regulation has not been modified since it was first adopted.

The existing regulation's appendix recommends specific types of security devices to be used by banks. Due to the advancement of technology in security devices, these recommendations now reference obsolete equipment. For example, the requirements for surveillance systems states that the film used in the camera should be capable of operating not less than three minutes and the film should be at least 16mm. Today's camera systems are more likely to be continuous video cameras.

The Board believes that any standards that reference specific security devices are likely to become obsolete because technology is continuing to advance at a rapid pace. To avoid the necessity of constantly updating required security devices, the Board's proposed regulation takes a more flexible approach. It requires each bank to designate a security officer who will administer a written security program. The proposed regulation states that the security program shall include certain procedures, and requires, at a minimum, that four specific security devices be installed, but leaves it to the discretion of the security officer, to determine which additional security devices will best meet the needs of the program. In this way the security officer can choose the most up-to-date equipment that meets the requirements of his particular bank. This approach also addresses the difficulty caused by establishing specific standards to apply to all banks regardless of the incidence of crime in their neighborhood.

The board believes that this proposed regulation complies with the requirements of the Bank Protection Act. That Act requires that the supervisory agencies issue minimum standards for the installation, operation and maintenance of security devices and procedures. The proposed regulation establishes a minimum standard by requiring four specified security devices. These four devices are: a secure space for cash; a lighting system for illuminating the vault; an alarm system; and tamper resistant locks on exterior doors and windows. In addition, the

proposed regulation establishes the contents of a security program, *e.g.* procedures for opening and closing for business, for safekeeping of valuables, and for identifying persons committing crimes. These are the minimum procedures that should comprise a bank's security program. To assist banks in establishing their program, the regulation suggests certain factors to be considered when selecting additional security devices.

To ensure that a bank's security program is reviewed on a regular basis for effectiveness, the proposed regulation requires a report to be made by the security officer to the bank's board of directors at least annually. This changes the current requirement, which was eliminated by FIRREA, that reports must be filed periodically with a bank's primary supervisory agency.

The following is a section-by-section analysis showing the modifications to the existing regulation:

Section 216.0—Scope of Part

This section has been rewritten as new § 216.1. The description of the regulation has been changed to emphasize the responsibility of a bank's board of directors to ensure that the bank adopts and maintains appropriate security procedures.

Section 216.1—Definitions

The "Definitions" section has been eliminated, and any definition needed has been provided where the defined word is first used.

Section 216.2—Designation of Security Officer

This section is now contained, with minor changes, in new § 216.2.

Section 216.3—Security Devices

Subpart (a)—The concept of the security officer surveying the need for security devices is contained in new § 216.2(b)(4). The required minimum security devices for each bank set forth in § 216.3 (a) (1)–(4) are now set forth in new § 216.3(b) (1)–(5), with the addition of a requirement for a secure space to protect cash or other liquid assets.

Subpart (b)—This subpart has been included in new § 216.3(b) (5).

Subpart (c)—This is the exception language allowing a bank to not comply with the specifics of the regulation so long as it preserved a statement of the reasons in its records. Because the specificity of the regulation has been eliminated, this section has been deleted.

Section 216.4—Security Procedures

Subpart (a)—The implementation requirements are now found in new § 216.2.

Subpart (b)—This subpart has been revised to combine similar functions and is found at new § 216.3.

Section 216.5—Filing of Reports

Subpart (a)—The requirement for filing reports regularly with the regulatory agency has been changed to require annual reports to the bank's board of directors. This is found at new § 216.4.

Subpart (b)—The requirement of internal recordkeeping of external crimes in now a suggested procedure under § 216.3(a)(2).

Subpart (c)—The requirement for special reports whenever requested by the regulatory agency has been eliminated as unnecessary because an agency can obtain such reports through its regular supervisory powers.

Section 216.6—Corrective Action

This section has been eliminated because it is covered under the agency's supervisory authority to prevent unsafe and unsound practices.

Section 216.7—Applicability to Federal Reserve Banks

This section has been revised and renumbered as new § 216.5.

Section 216.8—Penalty Provision

This section has been eliminated as unnecessary because it is contained in the statute and need not be set forth in the regulation.

Appendix A and B

Both appendices have been deleted. Appendix A was considered to be too specific and had become obsolete. Any specific new requirements would also have to be updated with advances in technology. Therefore, the draft regulation has been changed to be very general, with the requirement that the bank determine what is the best means of protecting itself and identifying criminals.

Appendix B concerns actions to be taken by employees in the case of a robbery. This has been deleted because it is included in the list of suggested procedures to be established under the security program required by § 216.3(a).

Approval of the proposed amendments to Regulation P would eliminate the need for information that the Board currently requires state member banks to maintain and submit in three reports: FR 4003 (Statement Regarding Security Devices That Do Not Meet the Minimum Requirements of

Regulation P), FR 4004 (Written Security Program for State Member Banks as Required by Regulation P), and FR 4005 (Annual Statement of Compliance with the Bank Protection Act of 1968). The Board therefore proposes to discontinue the FR 4003, FR 4004, and FR 4005 reports, effective with final approval of the proposed amendments to Regulation P. In accordance with section 3507 of the Paperwork Reduction Act of 1980, (44 U.S.C. 3507, and 5 CFR 1320.13), the proposed discontinuance of those reports will be reviewed by the Board under Office of Management and Budget delegated authority after consideration of the comments received during the public comment period.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendment will not have a significant economic impact on a substantial number of small entities. Small entities already are required to comply with the security standards established in the existing regulation, and this amendment provides for more flexibility in devising security programs, which should help minimize the existing costs to the institutions. The amendment also replaces required reports to the government with annual reports to the bank's board of directors, which should ease the regulatory burden on small institutions.

List of Subjects in 12 CFR Part 216

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements, Security measures, state member banks.

For the reasons set out in the preamble, title 12, part 216 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 216—SECURITY PROCEDURES

- Sec.
216.1 Authority, purpose and scope.
216.2 Designation of security officer.
216.3 Security program.
216.4 Report.
216.5 Federal Reserve Banks.

Authority: 12 U.S.C. 1881–1884.

§ 216.1 Authority, purpose, and scope.

(a) This regulation is issued by the Board of Governors of the Federal Reserve System (the "Board") pursuant to section 3 of the Bank Protection Act of 1968 (12 U.S.C. 1882). It applies to Federal Reserve Banks and state banks that are members of the Federal Reserve System. It requires each bank to adopt

appropriate security procedures to discourage robberies, burglaries, and larcenies and to assist in identifying and apprehending persons who commit such acts.

(b) It is the responsibility of the member bank's board of directors to comply with this regulation and ensure that a security program for the bank's main office and branches is developed and implemented.

§ 216.2 Designation of security officer.

Within 30 days after a state bank becomes a member of the Federal Reserve System, the bank's board of directors shall designate a security officer who shall have the authority, subject to the approval of the Board of directors, for immediately developing and administering a written security program, to protect each banking office from robberies, burglaries, and larcenies and to assist in identifying and apprehending persons who commit such acts.

§ 216.3 Security program.

(a) *Contents of security program.* The security program shall:

(1) Establish procedures for opening and closing for business and for the safekeeping of all currency, negotiable securities, and similar valuables at all times;

(2) Establish procedures that will assist in identifying persons committing crimes against the institution and that will preserve evidence that may aid in their identification or conviction; such procedures may include, but are not limited to:

(i) Retaining a record of any crime committed against the bank;

(ii) Maintaining a camera that records activity in the banking office; and

(iii) Using identification devices, such as bait money, dye packs or electronic tracking devices;

(3) Provide for initial and periodic training of employees in their responsibilities under the security program and in proper employee conduct during and after a robbery; and

(4) Provide for selecting, testing, operating and maintaining appropriate security devices, as specified in paragraph (b) of this section.

(b) *Security devices.* Each member bank shall have, at a minimum, the following security devices:

(1) A means of protecting cash or other liquid assets, such as a vault, safe, or other secure space;

(2) A lighting system for illuminating, during the hours of darkness, the area around the vault, if the vault is visible from outside the banking office;

(3) An alarm system or other appropriate device for promptly notifying the nearest responsible law enforcement officers of an attempted or perpetrated robbery or burglary;

(4) Tamper-resistant locks on exterior doors and exterior windows designed to be opened; and

(5) Such other devices as the security officer determines to be appropriate, taking into consideration:

(i) The incidence of crimes against financial institutions in the area;

(ii) The amount of currency or other valuables exposed to robbery, burglary, and larceny;

(iii) The distance of the banking office from the nearest responsible law enforcement officers;

(iv) The cost of the security devices;

(v) Other security measures in effect at the banking office; and

(vi) The physical characteristics of the structure of the banking office and its surroundings.

§ 216.4 Report.

The security officer for each member bank shall report at least annually to the bank's board of directors on the effectiveness of the security program.

§ 216.5 Federal Reserve Banks.

Each Reserve Bank shall develop and maintain a security program for its main office and branches subject to review and approval of the Board.

By order of the Board of Governors of the Federal Reserve System, April 2, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-7964 Filed 4-5-90; 8:45 am]

BILLING CODE 6210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Prior Notice Requirements; Change in Officials or Senior Executive Staff in and Reporting Requirements for Credit Unions That Are Newly Chartered or in Troubled Condition

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: These proposed rules implement section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) by requiring federally insured credit unions which fall within specified categories to file a notice with NCUA prior to adding or replacing a member of the board of directors, committee member or

employing or changing the responsibilities of an individual to a position as a senior executive officer.

NCUA may disapprove any proposed board or committee member or senior executive officer whose service is not considered to be in the best interest of the members of the credit union or of the public.

DATES: Comments must be received on or before June 5, 1990.

ADDRESSES: Send comments to Becky Baker, Secretary of the NCUA Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley or Tawana Y. James, Office of Examination and Insurance. Telephone Number: (202) 682-9640, or Allan Meltzer, Associate General Counsel. Telephone Number: (202) 682-9630.

SUPPLEMENTARY INFORMATION:

Background

On August 9, 1989, President signed the FIRREA, Public Law No. 101-73, 103 Stat. 183 (1989), into law. Section 914 of FIRREA amended the Federal Credit Union Act (FCU Act) by adding a new section 212 to the FCU Act [12 U.S.C. 1791]. NCUA is proposing to amend parts 701 and 741 of its regulations by adding new §§ 701.14 and 741.7 to establish notice and application requirements which would implement the new section 212. These new requirements apply to all federally insured credit unions, as mandated by section 914 of FIRREA.

The new section 212 requires specified categories of federally insured credit unions to furnish NCUA with at least 30 days notice before adding any individual to the board of directors, a committee or employing any individual as a senior executive officer. FIRREA imposes similar requirements on all federally insured institutions.

A federally insured credit union is covered by the notice requirement if the credit union: (1) Has been chartered less than 2 years, or (2) is otherwise in a "troubled condition," as determined on the basis of the credit union's most recent examination report, supervisory contact or insurance review. Section 212 also prohibits the credit union from adding the individual to the board, a committee or employing the individual as a senior executive officer, if NCUA issues a notice of disapproval.

Section 212 mandates that NCUA approve or disapprove individuals to the board of directors, committees, or senior executive staff in all federally insured

credit unions that are newly chartered or in troubled condition. This authority to approve or disapprove any proposed changes to officials or senior executive staff is delegated to the regional directors and is authorized under the current delegation of authority.

NCUA plans to afford the parties involved an opportunity to present views in those instances in which the proposed addition or change in directors, committee members or senior employees is disapproved by NCUA. Such procedures are being published in the *Federal Register* simultaneously with these proposed rules and will be contained in part 747 of the NCUA rules and regulations (12 CFR part 747).

Issues

Comments are invited on any of the issues described below, as well as on any other issues related to the proposed regulations:

1. *Definition of a senior executive officer (proposed § 701.14(b)(2)).* The term "senior executive officer" is defined to include any individual who exercises significant influence over, or participates in, major policy-making decisions of a federally insured credit union, without regard to title, salary, or compensation. Certain positions, listed in generic form, are automatically covered. The term "senior executive officer" also includes outside employees of a credit union, such as a consulting firm, hired to perform the functions of positions covered by the regulation.

2. *Definition of troubled condition (proposed § 701.14(b)(3)).* The term "troubled condition" is defined to include all credit unions assigned a composite rating by NCUA of 4 or 5 under CAMEL Rating System. The term also covers credit unions subject to administrative action proceedings as outlined in section 206 of the Federal Credit Union Act (12 U.S.C. 1786) or similar action by the appropriate state supervisory authority. Credit unions who have been granted assistance as outlined under section 116 or section 208 of the Federal Credit Union Act (12 U.S.C. 208) are also included.

The term "troubled condition" also includes a credit union that is informed in writing, based on an examination, supervisory contact or insurance review that it has been designated in a "troubled condition" for purposes of this regulation. A Letter of Understanding and Agreement based on safety and soundness concerns will also fall within this provision.

3. *Prior notice requirement (proposed § 701.14(c)).* There are two categories of situations in which federally insured credit unions must file a notice of intent

with NCUA to add a director, committee member or employ a senior executive officer. The first category exists when a credit union has been chartered for less than 2 years. The second category exists when a credit union is otherwise in a "troubled condition," as discussed above.

An additional issue is whether FIRREA section 914's notice requirement covering the "employment of an individual as a senior executive officer" includes promotions and lateral transfers to that position. NCUA believes that it does, and therefore the rule requires a notice whenever there is a "change in responsibilities" of any individual resulting in his or her assumption of a senior executive officer position. With respect to section 914's coverage of the "proposed addition of any individual to the board of directors," the rule covers not only increases in board membership, but also replacements of board members and the filling of vacancies on the board.

The prior notice requirement can be waived upon petition to the appropriate regional director, if delay could harm the credit union or the public interest. (Proposed § 701.14(d)(2).) The regulation states that prior notice is not required when directors are elected at a members' meeting. (Proposed § 701.14(d)(3).) Even though prior notice is not required, the information will have to be submitted within 48 hours of the election. Thus, all parties who have any reason to believe that a change or addition covered by the statute or the regulation is forthcoming should assemble the information prior to the addition or change. NCUA believes there are three options available to address the issue of what happens if the NCUA Board disapproves elected candidates. The position could be filled by the candidate with the next highest votes with NCUA approval; or the officials could appoint a candidate contingent on NCUA approval; or have all nominated candidate's names submitted to NCUA prior to the election. Comment is requested on which of the options is preferred.

Since the filing required is by the credit union, but the information relates to the individual director, committee member or employee, the individual must certify to the validity of the information. The individual has the option, with the concurrence of the credit union, of forwarding this data to NCUA under separate cover. (See proposed § 701.14(d)(1).)

Section 212 of the Federal Credit Union Act requires that the notice submitted to NCUA regarding the proposed board, committee member or

employee include the information described in section 7(j)(6)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)(6)(A)). The requirements of section 7(j)(6)(A) are set forth in § 701.14(d)(1) and are self-explanatory.

4. *Effective date.* A credit union that has been chartered for less than 2 years on the effective date of the final rule, when adopted, is covered by the notice requirement until the 2-year period since its charter has elapsed. For example, a credit union chartered in March 1989 would remain covered until March 1991, and therefore a notice would have to be filed for any addition to the board, committees, or any employment of a senior executive officer effected prior to March 1991.

Regulatory Flexibility Act

The NCUA Board certifies that the proposed rule, if made final, will not have a significant impact on a substantial number of small credit unions because the rule applies only to newly chartered and troubled credit unions. In addition, the credit union will only be required to report if changes in officials or senior executive staff occurs. Accordingly, the NCUA Board has determined that a Regulatory Analysis is not required.

Executive Order 12612

This amendment does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act.

Paperwork Reduction Act

These proposed rules, if adopted, will impose the requirement that any credit unions that are newly chartered or in troubled condition submit a notice of proposed changes in officials or senior executive staff to NCUA for approval. This requirement will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. Written comments on this rule should be forwarded directly to the OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20530, ATTN: Jerry Waxman. NCUA will publish a notice in the *Federal Register* once OMB action is taken on the submitted requirement.

List of Subjects in 12 CFR Parts 701 and 741

Troubled credit unions, senior executive officials, notice of disapprovals and prior notice requirements.

By the National Credit Union Administration Board on March 20, 1990.
Becky Baker,

Secretary of the NCUA Board.

Accordingly, NCUA proposes to amend its regulations as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and Pub. L. No. 101-73. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*, 42 U.S.C. 1981 and 42 3601-3610.

2. Section 701.14 is added to read as follows:

§ 701.14 Change in officials or senior executive staff in credit unions that are newly chartered or in troubled condition.

(a) *Statement of scope and purpose.* Section 212 of the Federal Credit Union Act (12 U.S.C. 1781) sets forth conditions under which a credit union must notify NCUA in writing of any proposed changes in its board of directors, or committee members or senior executive staff. The regulation only applies in cases of newly chartered credit unions and credit unions in troubled condition.

(b) *Definitions.* For the purposes of this section:

(1) *Committee member* means any individual who serves as an official of the credit union in the capacity of a credit committee member, or supervisory committee member.

(2) *Senior executive officer* means any individual who exercises significant influence over, or participates in, major policy-making decisions of a federally insured credit union, without regard to title, salary, or compensation. Senior executive officer includes, but is not limited to, the following positions: Senior executive officer (typically this individual holds the title of president or treasurer/manager), any assistant senior executive officer (e.g., any assistant president, any vice president or any assistant treasurer/manager) and the chief financial officer (controller). The term "senior executive officer" includes employees of a credit union, such as a consulting firm, hired to perform the functions of positions covered by the regulation.

(3) *Troubled condition* means any federally insured credit union that has one or a combination of the following conditions:

(i) Has been assigned.

(A) A 4 or 5 CAMEL composite rating by NCUA in the case of a federal credit union, or

(B) An equivalent 4 or 5 CAMEL composite rating by the state supervisor in the case of a federally insured, state-chartered credit union, or

(C) A 4 or 5 CAMEL composite rating by NCUA based on core workpapers received from the state supervisor in the case of a federally insured, state-chartered credit union in a state that does not use the CAMEL system. In this case, the state supervisor will be notified in writing by the regional director in the region in which the credit union is located that the credit union has been designated by NCUA as a troubled institution;

(ii) Has been granted assistance as outlined under section 116 of the Federal Credit Union Act;

(iii) Has been granted assistance as outlined under section 208 of the Federal Credit Union Act;

(iv) Is involved in administrative action proceedings as outlined in section 206 of the Federal Credit Union Act;

(v) Has been issued a Letter of Understanding and Agreement or a similar document that is a signed written agreement which requires action to improve or maintain the safety and soundness of the credit union; or

(vi) Has been issued a letter by the regional director in the region in which the federal credit union is located based on a supervisory contact, examination, or insurance review, that the credit union has been designated by NCUA as a troubled institution.

(c) *Prior notice requirement.* A federal credit union shall give NCUA written notice at least 30 days prior to the effective date of any addition or replacement of a member of the board of directors or committee or the employment or change in responsibilities of any individual to a position as a senior executive officer if:

(1) The credit union has been chartered for less than 2 years; or

(2) The credit union meets the definition of troubled condition as set forth in § 701.14(b)(3).

(d) *Procedures for notice of proposed change in the Director or Senior Executive Officer.*—(1) *Filing and acceptance.* Notices shall be filed with the appropriate regional director and shall contain information pertaining to the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted, subject to the authority of the regional director or his or her designee to require additional information. The information submitted must include the identity,

personal history, business background and experience of each person to be added, including his material business activities and affiliations during the past 5 years, and a description of any material pending legal or administrative proceedings in which he is a party and any criminal indictment or conviction of such person by a state or federal court be submitted. Each individual on whose behalf the notice is filed must attest to the validity of the information filed which pertains to that individual. At the option of the individual, the information may be forwarded to the regional director by the individual; however, in such cases, the federally insured credit union must file a notice to that effect. The credit union submitting the notice shall be notified of the date on which all such required information is received and the notice is accepted for processing. Before the end of the 30-day period, beginning on the date NCUA accepts the information for processing, the regional director will issue a notice of disapproval or approval of the proposed official or employee.

(2) *Waiver of prior notice requirement.*—(i) *Procedure for obtaining.* Parties may petition the appropriate regional director for a waiver of the prior notice required under this section. Waiver may be granted if it is found that delay could harm the credit union or the public interest. Any waiver shall not affect the authority of NCUA to issue a notice of disapproval within 30 days of the waiver.

(3) *Election of directors.* (i) In the case of the election of a new member of the board of directors at a meeting of the members of a federally insured credit union, prior notice is not required. However, a completed notice must be filed with the appropriate regional director within 48 hours of the election.

(e) *Commencement of service.* A proposed director, committee member or senior executive officer may begin to serve temporarily until the credit union and the individual is notified in writing of NCUA's approval or disapproval of the proposed addition or employment.

(f) *Notice of disapproval.* NCUA may disapprove the individual's serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual with respect to whom a notice under this section is submitted indicates that it would not be in the best interest of the members of the credit union or in the best interest of the public to permit the individual to be employed by, or associated with, the credit union. The notice of disapproval

will advise the parties of their rights of appeal.

PART 741—[AMENDED]

1. Part 741 Requirements for Insurance is proposed to be amended as follows:

2. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781 through 1790, and Pub. L. No. 101-73, Section 741.9 is also authorized by 31 U.S.C. 3717.

§§ 741.7—741.1 [Redesignated as §§ 741.8—7741.12]

3. Sections 741.7, 741.8, 741.9, 741.10 and 741.11 are redesignated as §§ 741.8, 741.9, 741.10, 741.11 are redesignated as §§ 741.8, 741.9, 741.10, 741.11 and 741.12, respectively.

4. A new § 741.7 is added to read as follows:

§ 741.7 Reporting requirements for credit unions that are newly chartered or in troubled condition.

Any federally insured newly chartered credit union or any credit union defined to be in troubled condition as outlined in § 701.14(b)(3) must adhere to the requirements stated in § 701.14(c) concerning the prior notice requirement.

[FR Doc. 90-8032 Filed 4-5-90; 8:45 am]
BILLING CODE 7535-35-01

12 CFR Part 747

Rules of Practice and Procedure

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The National Credit Union Administration (NCUA) is proposing to add subpart L to 12 CFR part 747 entitled Procedures and Standards Applicable to a Notice of Change in Senior Executive Officer, Committee Member or Director Pursuant to section 12 U.S.C. 1791. Subpart L sets forth rights that an individual or a credit union may exercise and procedures which must be followed in responding to a Notice of Disapproval issued by NCUA pursuant to section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law No. 101-73, 103 Stat. 183 (1989). NCUA may issue a Notice of Disapproval in response to a Notice filed by a federally insured credit union, pursuant to section 914 of FIRREA, notifying NCUA of its intent to add or replace a member of the board of directors or committees of a credit union, or employ or change the responsibilities of an individual to a

position of senior executive officer of such a credit union. The purpose of subpart L is to provide for the efficient and just handling of Notices of Disapproval and appeals from such Notices.

DATES: Comments must be received on or before June 5, 1990.

ADDRESSES: Send comments to Becky Baker, Secretary of the NCUA Board, National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: D. Michael Riley or Tawana Y. James, Office of Examination and Insurance, Telephone Number: (202) 682-9640, or Allan Meltzer, Associate General Counsel, Telephone Number: (202) 682-9630.

SUPPLEMENTARY INFORMATION: This proposed rule amends 12 CFR part 747, Rules of Practice and Procedure (part 747), which governs NCUA's administrative proceedings, by adding a new subpart L. Subpart L provides rules and procedures for notices filed pursuant to section 914 of FIRREA. Comment is requested for 60 days after publication.

1. Discussion

On August 9, 1989, the President signed into law the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Public Law No. 101-73, 103 Stat. 183, (1989). FIRREA amended the Federal Credit Union Act (FCU Act) in a number of ways, one of which was the addition of a new section 212 to the FCU Act, added pursuant to section 914 of FIRREA, Public Law No. 101-73, sec. 914, 103 Stat. 183, 484-485 (1989) (to be codified at 12 U.S.C. section 1791). NCUA is amending part 747 of its Rules of Practice and Procedure, 12 CFR part 747 by including subpart L which sets forth the rights that an individual or a credit union may exercise and procedures which must be followed when NCUA issues a Notice of Disapproval pursuant to section 914 of FIRREA.

Section 914 requires specified categories of federally insured credit unions to furnish NCUA with at least 30 days notice before adding any individual to the board of directors or committees or employing any individual as a senior executive officer. A federally insured credit union is covered by the notice requirement if the credit union: (1) Has been chartered less than 2 years, or (2) otherwise in a "troubled condition," as determined on the basis of the credit union's most recent report of examination or supervisory contact or

insurance review. Section 914 also prohibits the credit union from adding the individual to the board or committee, or employing the individual as a senior executive officer, if NCUA issues a Notice of Disapproval.

2. Section-by-Section Summary and Discussion

Section 747.1201 sets forth the scope of subpart L. It sets forth under what conditions an institution must inform NCUA of changes in Officials or senior executive officer.

Section 747.1202 of subpart L sets forth guidelines for when the NCUA Board or its designee may issue a Notice of Disapproval of an individual on whose behalf a federally insured credit union has given notification of change in position pursuant to section 212. Those criteria include, inter alia, that the individual's competence, experience, character, or integrity indicate that it would not be in the best interest of the members of the credit union to permit the individual to be employed by, or associated with the credit union, or that it would not be in the best interest of the public to permit the individual to be employed by such a credit union.

Section 747.1203 of subpart L provides that the Notice of Disapproval must be served upon the credit union and the individual who is a candidate for director, committee member or senior executive officer and that the Notice of Disapproval must state the relevant considerations for the disapproval. The Notice of Disapproval must also set forth that the individual or the credit union may file an appeal from the Notice of Disapproval within 15 days from the receipt of the Notice of Disapproval and must specify what additional information must be provided by the petitioner. The appeal must be in writing and filed in the appropriate regional office. The appeal must set forth the reasons why NCUA should review its decision and other evidence that was not presented at the time of notifying NCUA of the change in position.

A determination on an appeal must be rendered within 30 days from receipt of the appeal. Where an appeal is denied, § 747.1204 requires that the individual be notified of the relevant considerations for the denial and be advised that the applicant may request an oral hearing within 15 days from the receipt of the denial. Should the petitioner not receive a decision denying the appeal within 30 days, then he may file a request for a hearing within 15 days from the date of expiration of the 30-day period. The request for a hearing

pursuant to § 747.1204 must set forth the relief desired and the grounds for requesting that relief.

Section 747.1205 of subpart L accords an individual the opportunity for an oral hearing. The hearing is conceived as an informal proceeding where a presiding officer determines whether to allow the presentation of witnesses. Pursuant to part 747.1205(2)(d) no discovery is permitted; however, an applicant may introduce relevant and material documents and argument is made on the record. The presiding officer is authorized to take or cause to be taken depositions of unavailable witnesses pursuant to § 747.1205(2)(f).

At the request of the applicant or NCUA enforcement staff, under § 747.1205(2)(g) the record may remain open for an additional 5 days following the hearing for additional submissions. Once the record has closed, the presiding officer must make his or her recommendations to the NCUA Board or its designee within 15 days. The Board or its designee will issue a decision and order within 45 days.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board certifies that the proposed rule, if made final, will not have a significant impact on a substantial number of small credit unions because the rule applies only to newly chartered and troubled credit unions. In addition, the credit union will only be required to report if changes in officials or senior executive staff occur. Accordingly, the NCUA Board has determined that a Regulatory Analysis is not required.

Executive Order 12612

This amendment does not affect state regulation of credit unions. It implements provisions of the Federal Credit Union Act.

Paperwork Reduction Act

These proposed rules, if adopted, will impose the requirement that any credit unions that are newly chartered or in troubled condition submit a notice of proposed changes in officials or senior executive staff to NCUA for approval. This requirement will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act. Written comments on this rule should be forwarded directly to OMB Desk Officer indicated below at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20530, ATTN: Jerry Waxman. NCUA will publish a notice in the *Federal*

Register once OMB action is taken on the submitted requirement.

List of Subjects in 12 CFR Part 747

Administrative practice and procedure, Credit unions.

By the National Credit Union Administration Board on March 20, 1990.

Becky Baker,

Secretary of the NCUA Board.

Accordingly, NCUA proposes to amend its regulations in 12 CFR Chapter VII, Part 747 to read as follows:

PART 747—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 747 is revised to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1786, 12 U.S.C. 1784, 12 U.S.C. 1787, 12 U.S.C. 1791, 12 U.S.C. 1995c.

2. A new subpart L consisting of §§ 747.1201 through 747.1205, is added to read as follows:

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors or Committee Members Pursuant to Section 212 of the Act

Sec.

747.1201 Scope.

747.1202 Grounds for disapproval of notice.

747.1203 Procedures where notices of disapproval issued.

747.1204 Decision on appeal.

747.1205 Hearing.

Subpart L—Procedures and Standards Applicable to a Notice of Change in Senior Executive Officers, Directors or Committee Members Pursuant to Section 212 of the Act

§ 747.1201 Scope

The rules and procedures set forth in this subpart shall apply to the notice filed by a credit union pursuant to section 212 of the Act, 12 U.S.C. 1791, for the consent of NCUA to add to or replace an individual on the board of directors or committee, or to employ any individual as a senior executive officer or change the responsibilities of any individual to a position of senior executive officer where the credit union:

(a) Has been chartered less than 2 years; or

(b) Is otherwise in a "troubled condition," as defined in § 701.14 of the Rules and Regulations.

§ 747.1202 Grounds for disapproval of notice.

The NCUA Board or its designee may issue a notice of disapproval with respect to a notice submitted by a credit

union pursuant to section 212 of the Act, 12 U.S.C. 1791, where:

(a) The competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interest of the shareholders of the credit union to permit the individual to be employed by, or associated with, such credit union; or

(b) The competence, experience, character, or integrity of the individual with respect to whom such notice is submitted indicates that it would not be in the best interest of the public to permit the individual to be employed by, or associated with, the credit union.

§ 747.1203 Procedures where notice of disapproval issued.

(a) The Notice of Disapproval shall be served upon the federally insured credit union and the candidate for director, committee member or senior executive officer. The Notice of Disapproval shall:

(1) Summarize or cite the relevant considerations specified in § 747.1202;

(2) Shall inform the individual and the credit union that an appeal of the disapproval may be filed within 15 days of receipt of the Notice of Disapproval; and

(3) Shall specify what additional information, if any, must be contained in the appeal.

(b) The appeal must be filed at the appropriate regional office.

(c) The appeal must be in writing and should:

(1) Specify the reasons why NCUA should review its disapproval; and

(2) Set forth relevant, substantive and material documents that for good cause were not previously set forth in the notice required to be filed pursuant to section 212 of the Act.

§ 747.1204 Decision on appeal.

(a) Within 30 days of receipt of the appeal, the regional director shall notify the credit union and/or individual filing the appeal (hereafter petitioner) of NCUA's decision on appeal.

(b) If the decision is to approve the notice, the credit union and the individual involved shall be so notified.

(c) A denial of the appeal shall:

(1) Inform the petitioner that a written request for a hearing, stating the relief desired and the grounds therefor, may be filed with the Secretary of the Board within 15 days after the receipt of the denial; and

(2) Summarize or cite the relevant considerations specified in § 747.1202.

(d) If a decision is not rendered within 30 days, the petitioner may file a request

for a hearing within 15 days from the date of expiration.

§ 747.1205 Hearing.

(a) *Hearing dates.* The Secretary shall order a hearing to be commenced within 30 days after receipt of a request for a hearing filed pursuant to § 747.1204. Upon request of the petitioner or the Secretary, the presiding officer or the Secretary may order a later hearing date.

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC or at another designated place, before a presiding officer designated by the Secretary.

(2) The provisions of §§ 747.102, 747.119 and 747.120 of subpart A of this part shall apply to hearings held pursuant to this section, but except as expressly provided in this subpart L, the balance of subpart A of this part shall not apply to such hearings.

(3) The petitioner may appear at the hearing and shall have the right to introduce relevant and material documents and make an oral presentation. Members of the NCUA enforcement staff may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this subpart L.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the petitioner afforded the hearing.

(6) In the course of, or in connection with any hearing under this subsection, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with this part.

(7) Upon the request of the applicant afforded the hearing, or the members of the NCUA enforcement staff, the record

shall remain open for 5 business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the board or its designee, where possible, within 15 days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Secretary who shall promptly certify the entire record, including the recommendation to the NCUA Board or its designee, the Secretary's certification shall close the record.

(c) *Written submissions in lieu of hearing.* The petitioner may, in writing, waive a hearing and elect to have the matter determined on the basis of written submissions.

(d) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect.

(e) *Decision by NCUA Board or its designee.* Within 45 days following the Secretary's certification of the record to the NCUA Board or its designee, the NCUA Board or its designee shall notify the affected individual whether the denial of the notice will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the NCUA Board or its designee that is adverse to the petitioner. The NCUA Board or its designee shall promptly rescind or modify the denial where the decision is favorable to the petitioner.

[FR Doc. 90-8033 Filed 4-5-90; 8:45 am]

BILLING CODE 7535-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 080CE, Notice No. 23-ACE-51]

Special Conditions; Dornier SEASTAR Model CD2 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed amendment to special conditions.

SUMMARY: Final special conditions for the Dornier SEASTAR Model CD2 Series airplanes were published in the Federal Register (54 FR 43417) on

October 25, 1989. This notice proposes to amend those special conditions.

These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards for airplanes to be type certificated in the commuter category. The novel and unusual design features include operation from water for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This notice proposes the additional airworthiness standards, which the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: Comments must be received on or before August 6, 1990.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Assistant Chief Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. 080CE, Room No. 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 080CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Norman R. Vetter, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the amending of these special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking further rulemaking action on this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 080CE." The postcard will be date stamped and returned to the commenter. The proposals contained in this notice may be changed in light of the comments received. All comments received will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested parties. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Background

On November 18, 1986, Claudius Dornier SEASTAR GmbH and Company made application for a type certificate through the Luftfahrt Bundesamt (LBA) to the FAA Brussels Office for the SEASTAR Model CD2 airplane. At the time of application, commuter category airplane airworthiness standards were not incorporated into part 23 of the Federal Aviation Regulations (FAR). Certification for 12 passenger airplanes would require compliance with the part 25 airworthiness standards for transport category airplanes.

The commuter category airworthiness standards, which permit a seating configuration, excluding pilot seats, of 19 or fewer, were incorporated into part 23 by amendment 23-34, which became effective on February 17, 1987. Claudius Dornier subsequently made a new application for U.S. type certificate on July 31, 1987, for part 23 commuter category certification.

The Dornier SEASTAR Model CD2 is a high wing, twin-engine amphibious airplane with turbopropeller engines mounted on the center-top of the parasol wing in a tandem push-pull arrangement. The airframe structure utilizes composite configuration of 12 passengers, excluding pilot seats.

Type Certification Basis

The type certification basis for the Dornier SEASTAR Model CD2 Series airplane is as follows: Part 21 of the Federal Aviation Regulations (FAR), § 21.29; part 23 of the FAR, effective February 1, 1965, as amended by amendments 23-1 through 23-34; Special Federal Aviation Regulation (SFAR) No. 27, effective February 1, 1974, as amended by amendments 27-1 through 27-6; part 36 of the FAR, effective December 1, 1969, as amended by amendments 36-1 through the amendment effective on the date of type certification; exemptions, if any; special conditions 23-ACE-44; and any amendment to special conditions 23-ACE-44 that may result from this notice.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type of certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety

standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, in accordance with § 21.17(a)(2).

Final special conditions for the Dornier SEASTAR Model CD2 airplane were published in the *Federal Register* (54 FR 43417) on October 25, 1989. This notice proposes to amend these special conditions.

The Dornier SEASTAR Model CD2 is an amphibious airplane to be type certificated in accordance with the commuter category standards of part 23, amendment 23-34. The commuter category airworthiness standards require scheduled takeoff speeds, in accordance with §§ 23.53 and 23.57.

When the speed scheduling concept began, the premise was that staying on the surface (ground) was the safest procedure until the capability to fly with adequate controllability and performance was assured. These speeds include factors (multipliers) of minimum one engine inoperative control speed (V_{MC}) and stall speed (V_{SI}). The airworthiness standards also require all decision speeds to be equal to or greater than 1.1 times the minimum one engine inoperative control speed (V_{MC}). This concept is not valid for airplanes operating on the water. Because of the physical laws of hydrodynamics, the Dornier SEASTAR cannot be kept on the water after reaching flying speed; however, the speed schedules specified in § 23.53 would prohibit rotation or takeoff at any speeds less than 1.1 times the stall speed (V_{SI}). To require the SEASTAR to remain on the water surface until reaching the scheduled rotation speed (V_R) could present potentially hazardous controllability problems such as porpoising. When a seaplane attains sufficient aerodynamic lift to support weight and yet is forced to stay on the water, the combination of aerodynamic lift and water lift on the hull, quickly exceeds all available longitudinal control authority and the seaplane may be forced into the air. Any undulations of the water surface from swells or wave action increase the difficulty of keeping the airplane on the surface. In addition, any attempt to prevent becoming airborne by forcibly depressing the hull further into the water will rapidly increase drag to the point where it is impossible to accelerate with one engine inoperative to gain the additional increments of speed required by the multipliers.

The normal techniques used in seaplane flying involve keeping the

airplane at a positive aerodynamic angle of attack while maintaining minimum water drag on the hull (on-the-step). This is a progressive process of trading water lift for aerodynamic lift until aerodynamic lift exceeds weight and the seaplane becomes airborne. As it becomes airborne, there is a rapid decrease in water drag and the airplane will quickly accelerate in airspeed. The most critical concern at this point would be controllability should an engine fail, i.e., the relationship of the airplane's velocity at this point with V_{MC} . In the event of the engine failure, the only issue for the SEASTAR is the ability to either safely abort the takeoff or to fly and accelerate to a climb speed at which the required climb gradients can be achieved. Once becoming airborne, the process is the same as for any land based airplane in that, upon reaching V_1 , a decision is made to abort the takeoff or continue the flyout. Other than the regulatory technicality of already being airborne at the time the decision is made, there is no distinction that can be made from a procedure or safety standpoint.

In view of the novel and unusual design features discussed for the SEASTAR Model CD2 airplane, the following amendment to special conditions 23-ACE-44 is proposed.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, and Safety.

Authority

The authority citation for these proposed amended special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend special conditions 23-ACE-44 as part of the type certification basis for the Dornier SEASTAR Model CD2 Series airplanes by adding the following:

* * * * *

6. Water Operation

For water operation, part 23 through amendment 23-34 applies, except that:

(a) Instead of complying with § 23.51(d)(5), the following applies: For the approved takeoff surface conditions; and

(b) Instead of complying with § 23.53(c)(1), the following applies: The takeoff decision speed, V_1 , is the calibrated airspeed at which, as a result of engine failure or other reasons, the pilot is assumed to have made a decision to continue or discontinue the takeoff. The takeoff decision speed, V_1 , must be selected by the applicant, but may not be less than the greater of the following:

1. $1.10 V_{SI}$;
2. $1.10 V_{MC}$ established in accordance with § 23.149;

3. A speed at which the airplane can be shown adequate to safely continue the takeoff, using normal piloting skill, when the critical engine is suddenly made inoperative; or

4. V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant that the critical engine is failed and the instant at which the pilot recognizes and reacts to the engine failure as indicated by the pilot's application of the first retarding means during the accelerate-stop determination of § 23.55.

(c) Section 23.53(c)(4) does not apply.

(d) Section 23.53(c)(5) does not apply.

(e) Instead of complying with § 23.53(c)(6), the following applies: The takeoff distance determined in accordance with § 23.59 and the takeoff must be safely continued from the point at which the airplane is 35 feet above the takeoff surface at a speed not less than 5 knots less than the established V_2 speed.

(f) Instead of complying with § 23.55(a)(2), the following applies: Decelerate to speed of 3 knots or less from the point at which V_1 is reached; assuming that, in the case of engine failure, the pilot has decided to stop as indicated by application of the first retarding means at the speed V_1 .

(g) Instead of complying with § 23.55(b), the following applies: Suitable retardation means may be used in determining the accelerate-stop distance if that means is available with the critical engine inoperative and if that means—

- (1) Is safe and reliable;
- (2) Is used so that consistent results can be expected under normal operating conditions; and
- (3) Is such that exceptional skill is not required to control the airplane.

(h) Instead of complying with § 23.57(a)(2), the following applies: The airplane must be accelerated to V_{EF} , at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(i) Instead of complying with § 23.57(b), the following applies: During the acceleration to speed V_2 , the takeoff flight path must be measurably positive in accordance with paragraph (k) of this special condition.

(j) Instead of complying with § 23.57(c)(4), the following applies: Except for automatic propeller feathering, the airplane configuration may not be changed, and no change in power or thrust that requires action by the pilot may be made until the airplane is 400 feet above the takeoff surface.

(k) Instead of complying with § 23.67(e)(1)(i), the following applies: TAKEOFF, CLEAR OF THE WATER. The minimum steady gradient of climb between the lift-off speed, V_{LOF} , and reaching takeoff safety speed, V_2 must be measurably positive at all points.

(l) Instead of complying with § 23.57(e)(1)(ii), the following applies: TAKEOFF, INITIAL CLIMB. The minimum steady gradient of climb must not be less than 2 percent at the speed V_2 until the airplane is 400 feet above the takeoff surface.

(m) Instead of complying with § 23.1587(d)(2), the following applies: The conditions under which the performance information was obtained including the takeoff surface condition and the airspeed at the 50-foot height used to determine the landing distance as required by § 23.75.

Issued in Kansas City, Missouri, on March 27, 1990.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-7948 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-262-AD]

Airworthiness Directives: Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, which would require inspection to detect cracks in the slat track roller bearing bolts, and replacement, if necessary. This proposal is prompted by reports of broken slat track roller bearing bolts. This condition, if not corrected, could result in jamming of the affected slat or separation of the slat from the airplane.

DATES: Comments must be received no later than May 29, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-262-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Kathi N. Ishimaru, Airframe Branch, ANM-120S; telephone (206) 431-1525.

Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-262-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been several reports of broken slat track roller bearing bolts on the Boeing Model 727 series airplanes. Fatigue cracks have been found originating from the bolts' lubrication cross holes. The cracking has been attributed to the orientation of the lubrication hole relative to the track. This condition, if not corrected, could result in jamming of the affected slat or separation of the slat from the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 727-57-0172, Revision 1, dated October 12, 1989, which describes procedures for inspection and modification of the slat track roller bearing bolts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection and replacement, if necessary, of the slat track roller bearing bolts and rollers in accordance with the service bulletin previously described.

There are approximately 1,695 Model 727 series airplanes of the affected design in the worldwide fleet. It is estimated that 1,172 airplanes of U.S. registry would be affected by this AD, that it would take approximately 40 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,875,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 727 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks in the slat track roller bearing bolts, accomplish the following:

A. Prior to the accumulation of 12,000 flight cycles or within the next 2,500 flight cycles after the effective date of this AD, whichever occurs later, conduct a magnetic particle inspection of the slat track roller bearing bolts, in accordance with Figure 2 of Boeing Service Bulletin 727-57-0172, Revision 1, dated October 12, 1989. Repeat the inspection at intervals not to exceed 2,500 flight cycles.

B. If a cracked bolt is found, prior to further flight, replace the bolt and check the associated roller for smooth operation. If the roller does not turn smoothly, prior to further flight, replace the roller.

C. Modification of the bolts and slat tracks in accordance with Figures 2 and 3 of Boeing Service Bulletin 727-57-0172, Revision 1, dated October 12, 1989, constitutes terminating action for repetitive inspections required by paragraph A., above.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Seattle Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 28, 1990.

Darrell M. Pederson,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 90-7950 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-194-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an earlier proposed airworthiness

directive (AD), applicable to certain Boeing Model 747 series airplanes, which would have required inspection of the skin joints in the fuselage upper lobe for skin cracks and corrosion, and repair, if necessary. That proposal was prompted by a review of the structural integrity of the Model 747 pressurized fuselage skin lap joints which was conducted by the FAA, following an accident involving a Boeing Model 737 airplane in which a cold bonding manufacturing process used in the construction of the skin lap joints may have contributed to the failure of a large portion of the fuselage. This proposal more clearly defines the inspections and repairs deemed necessary to maintain airworthiness. Failure to detect and repair fatigue cracks could lead to rapid decompression of the airplane and the inability to carry fail-safe loads.

DATES: Comments must be received no later than May 8, 1990.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-194-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Branch, ANM-120S; telephone (206) 431-1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 88-NM-194-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD), applicable to Boeing Model 747 series airplanes, production line numbers 001 through 200, which would have required inspection of the fuselage skin lap joints at and above stringer S-23 from body station (BS) 140 to BS 2360, and repair if necessary, was published in the Federal Register on February 21, 1989, (54 FR 7446). That action was prompted by a review of the structural integrity of the Model 747 pressurized fuselage skin lap joints which was conducted by the FAA, following an accident involving a Boeing Model 737 airplane in which a cold bonding manufacturing process used in the construction of the skin lap joints may have contributed to the failure of a large portion of the fuselage. Since the Model 747 fuselage lap joints through production line number 200 were also constructed using this manufacturing process, the FAA determined that a similar unsafe condition could develop on the Model 747, and, therefore, an inspection program for these joints was necessary.

Since issuance of the proposal, the following has occurred:

1. Many useful comments were received from the public and the original proposal is substantially affected by these.

2. The FAA has recently reviewed and approved Boeing Service Bulletin 747-53-2307, dated December 21, 1989, which more clearly defines the areas to be inspected, inspection techniques (including a high frequency eddy current inspection technique), repair procedures, and a modification which would terminate the mandatory inspection requirement for the modified portion of the fuselage.

Since the new proposed requirements which resulted from these events go beyond the scope of those originally proposed, the comment period has been reopened to provide additional time for public comment.

There are approximately 195 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 110 airplanes of U.S. registry would be affected by this AD, that it would take approximately 100 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$440,000.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0056.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending the notice of proposed rulemaking, Docket 88-NM-194-AD, FR Doc. 89-3904, which was published in the Federal Register on February 21, 1989 (54 FR 7446), as follows:

Boeing: Applies to Model 747 series airplanes, production line numbers 001 through 200, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent depressurization resulting from cracks and/or corrosion in the fuselage skins, accomplish the following:

A. Accomplish either paragraph A.1. or A.2., below:

1. Within 1,000 landings after the effective date of this AD, and thereafter at intervals not to exceed 1,000 landings (2,000 landings from body station (BS) 1000 to BS 1480), conduct a detailed external visual inspection of the fuselage skin at the upper lobe skin lap joints for cracks and evidence of corrosion (bulging skin between fasteners, blistered paint, dished or popped rivet heads, or loose fasteners) in accordance with Boeing Service Bulletin 747-53-2307, dated December 21, 1989. If cracking or corrosion is detected during the visual inspection, prior to further flight, conduct a high frequency eddy current (HFEC) inspection for cracks in the skin at the upper row of fasteners of the affected skin panel lap joint, in accordance with the above mentioned Boeing service bulletin.

2. Within 1,000 landings after the effective date of this AD, and thereafter at the intervals specified below, conduct the following inspections at the upper lobe skin lap joints in accordance with Boeing Service Bulletin 747-53-2307, dated December 21, 1989.

a. Conduct a detailed visual inspection for cracks and evidence of corrosion (bulging skin between fasteners, blistered paint, dished fasteners, popped rivet heads, or loose fasteners) and repeat at intervals not to exceed 2,000 landings.

b. Conduct a HFEC inspection for cracks, in accordance with the above mentioned Boeing service bulletin, in the skin at the upper row of fasteners of the lap joints forward of BS 1000 and repeat at intervals not to exceed 4,000 landings.

c. Conduct a HFEC inspection for cracks, in accordance with the above mentioned Boeing service bulletin, in the skin at the upper row of fastener holes of the lap joints aft of BS 1480 and repeat at intervals not to exceed 6,000 landings.

B. Any cracks, or corrosion for which material loss exceeds 10% of the material thickness, which are detected during the inspections required by this AD must be repaired, prior to further flight, in accordance with Boeing Service Bulletin 747-53-2307, dated December 21, 1989. Terminating action, as described in the service bulletin, must be accomplished within 15 months after repair for the remainder of any skin panel lap joint

in which cracks, or corrosion exceeding 10% of the material thickness, are found. Terminating action, as described in the service bulletin, must be accomplished within 30 months for any skin panel lap joint in which corrosion is found, but the corrosion does not exceed 10% of the material thickness, and no cracking is found; and HFEC inspection of the lap joint for cracks, as described in the service bulletin, must be accomplished at repetitive intervals of 500 landings until the terminating action is completed.

C. Within 7 days after the detection of cracks or corrosion when conducting the inspections required by this AD, submit a written report of findings in the Manager, Seattle Aircraft Certification Office, ANM-1005, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The report must contain the following information:

1. Serial number of the airplane inspected;
2. Total number of landings on the airplane inspected;
3. Number of landings since last inspected;
4. The location and dimensions of cracks and/or corrosion detected.

D. To conduct the inspections required by this AD:

1. Remove the paint, using an approved chemical stripper; or
2. Ensure that each fastener head is clearly visible.

E. For the purposes of complying with this AD, the number of landings may be determined to equal the number of pressurization cycles where the cabin pressure differential was greater than 1.5 PSI.

F. The inspections required by this AD may be terminated for the affected lap joints on which the terminating action has been accomplished in accordance with Boeing Service Bulletin 747-53-2307, dated December 21, 1989.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

H. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 29, 1990.

Darrell M. Pederson,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 90-7949 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-43-AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Fokker Model F27 series airplanes, which would require modification of the cockpit voice recorder (CVR) and flight data recorder (FDR). This proposal is prompted by reports that the voice and flight data recorders, in their present configuration, may continue to operate and possibly lose information following an accident. This condition, if not corrected, could affect air safety if important information provided by the CVR and FDR is not available following an accident to facilitate the determination of probable cause and the subsequent development of necessary corrective action or design changes to prevent future accidents.

DATES: Comments must be received no later than May 29, 1990.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 90-NM-43-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Huhn, Standardization Branch, ANM-113; telephone (206) 431-1950. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 90-NM-43-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Fokker Model F27 series airplanes. There have been recent reports that the cockpit voice recorder and the flight data recorder may continue to record and progressively erase data following an accident. This condition, if not corrected, could affect air safety if important information provided by the CVR and FDR is not available following an accident to facilitate determination of probable cause and the subsequent development of necessary corrective action or design changes to prevent future accidents.

Fokker has issued Service Bulletin F27/23-27, dated August 14, 1989, which describes procedures to modify the cockpit voice recorder, which include the installation of wiring, an impact switch, a power relay, and a circuit breaker. Fokker has also issued Service Bulletin F27/31-11, dated August 14, 1989, which describes procedures to

modify the flight data recorder, which include the installation of wiring, an impact switch, a power relay, and a circuit breaker.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the cockpit voice recorder and flight data recorder in accordance with the service bulletins previously described.

It is estimated that 33 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The estimated cost for required parts is \$700 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$36,300.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Applies to Model F27 series airplanes, Serial Numbers 10102 through 10684, 10686, 10687, and 10689 through 10692, certificated in any category. Compliance is required within 180 days after the effective date of this AD, unless previously accomplished.

To prevent loss of cockpit voice recorder and flight data recorder information, accomplish the following:

A. Modify the voice recorder by installing wiring, an impact switch, a power relay, and a circuit breaker, in accordance with Fokker Service Bulletin F27/23-27, dated August 14, 1989.

B. Modify the flight data recorder by installing wiring, an impact switch, a power relay, and a circuit breaker, in accordance with Fokker Service Bulletin F27/31-11, dated August 14, 1989.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Standardization Branch, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on March 28, 1990.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 90-7951 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-ASW-07]

Airworthiness Directives; Rogerson Hiller Corporation Model UH-12 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) applicable to Rogerson Hiller helicopters which would require operators to install shims between the drag strut and the tension-torsion (T-T) pin. This proposed AD is prompted by reports of T-T pin failure and consequent excessive lead-lag of the main rotor blade with unacceptable vibration. This condition could result in possible loss of control of the helicopter. **DATES:** Comments must be received on or before May 21, 1990.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Regional Rules Docket, Office of the Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76106-9958, Docket Number 90-ASW-07, or delivered in duplicate to Room 158, Building 3B, of the Rules Docket at the above address. Comments delivered must be marked: Docket Number 90-ASW-07. Comments may be inspected at the above location in room 158, Building 3B, between 8 a.m. and 4:30 p.m., weekdays, except Federal holidays.

The applicable service information may be obtained from: Rogerson Hiller Corporation, 2140 W. 18th Street, Port Angeles, Washington 98362, or may be examined in the Regional Rules Docket.

FOR FURTHER INFORMATION CONTACT: Thomas Rodriguez, FAA, Airframe Branch, ANM-120S, Northwest Mountain Region, 17900 Pacific Highway South, C-88966, Seattle, Washington 98166; telephone (206) 431-1928.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the FAA before any final action is taken on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Regional Rules Docket, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, room 158, Building 3B, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 90-ASW-07." The postcard will be date/time stamped and returned to the commenter.

There has been a report of a T-T pin failure causing excessive lead-lag of the main rotor blade. This caused unacceptable vibration and forced the pilot to make an emergency landing which resulted in damage to the helicopter. In addition, recent service history indicates a need to make the requirements proposed mandatory.

Since this condition is likely to exist or develop on other helicopters of this same type design, the proposed AD would require installation of shims between the drag strut terminal and the T-T pin in accordance with appendix I.

The regulations proposed herein would not have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this proposed regulation involves

approximately 650 Model UH-12 series helicopters of the affected design in the worldwide fleet. It is estimated that 500 helicopters of U.S. registry would be affected by this AD; that it would take approximately one manhour per aircraft to accomplish the required actions; and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$20,000. Therefore, I certify that this section: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Regional Rules Docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Rogerson Hiller Corporation: Applies to all Model UH-12 series helicopters certificated in any category. (Docket Number 90-ASW-07)

Compliance required as indicated, unless previously accomplished.

To reduce the potential of excess lead-lag of the main rotor blade and the need to make an emergency landing as a consequence, accomplish the following:

(a) Within the next 100 hours' time in service after the effective date of this AD or at the next annual inspection, whichever comes first, install shims and associated parts in accordance with Appendix I.

(b) An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Hwy., S., Seattle, Washington 98168.

(c) Special flight permits may be issued in accordance with FAR §§ 21.197 and 21.199 to operate aircraft to a base in order to comply with the requirements of this AD.

Issued in Fort Worth, Texas, on March 28, 1990.

John J. Shapley,

*Acting Manager, Rotorcraft Directorate,
Aircraft Certification Service.*

Appendix I

Accomplishment Instructions

A. Secure M/R blade from moving when the drag strut attaching hardware is removed.

B. Remove and discard existing hardware which attaches the drag strut to the T.T. pin.

Note: If P/N 51452 T.T. pin is installed accomplish dye penetrant inspection at this time, as outlined in paragraph 3 of the Service Letter UH12-51-2. Pay particular attention to the I.D. of the bolt hole.

C. Install shims P/N 51499-2, -4 or -6 as required to maintain a .002 inch maximum combined clearance between the drag strut terminal and the T.T. pin in Area A. Refer to Figure 1.

Note: Divide shim thickness equally on each side of the T.T. pin if possible.

D. Install new bolt P/N MS21250-07020, washers P/N MS20002C7 and MS20002-7 and nut P/N RMLH6422T070 or LH7461T070D ALT. as detailed in figure 1.

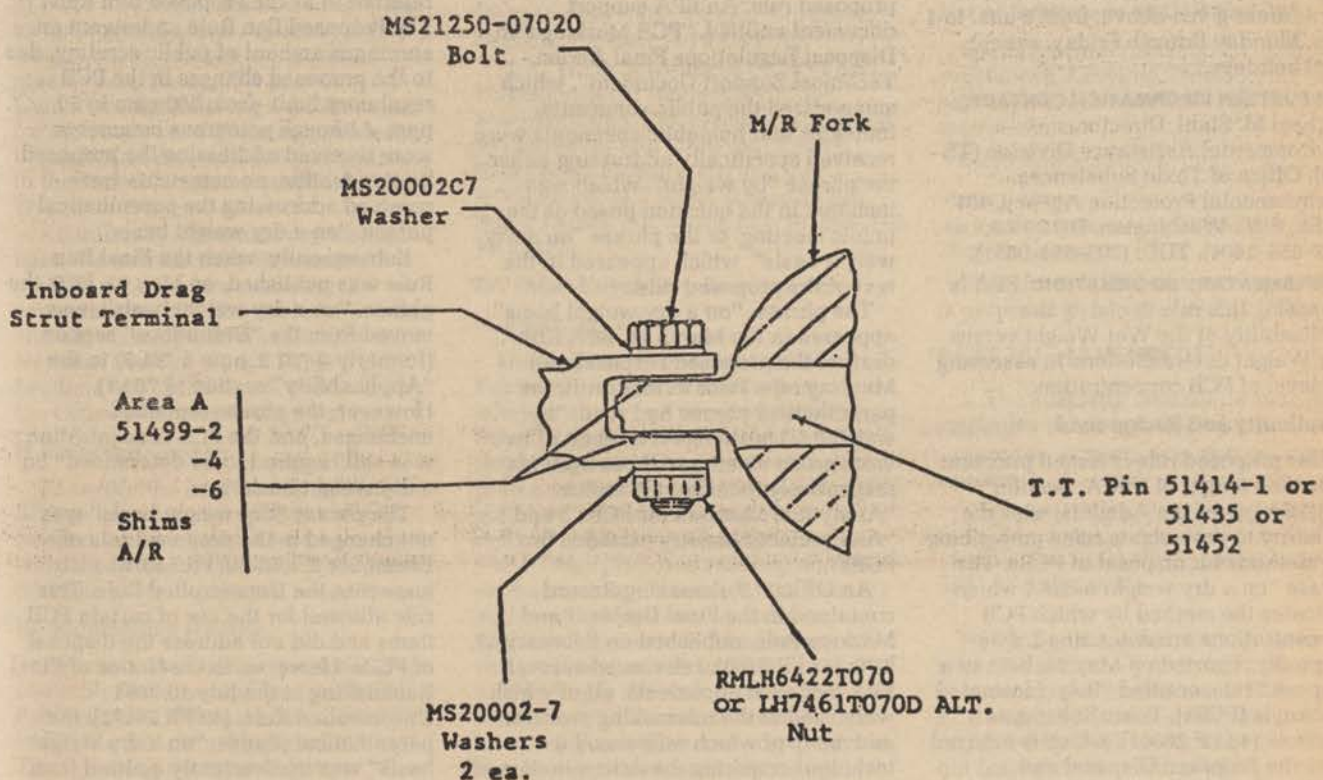
E. Perform alignment check of drag strut in accordance with paragraph 1 of Service Letter UH-12-51-2.

F. Torque nut to 750-800 inch pounds.

BILLING CODE 4910-13-M

<u>New Part No.</u>	<u>Qty</u>	<u>Key Word</u>	<u>Old Part No.</u>	<u>Disposition</u>
MS21250-07020	2	Bolt	AN177-16 (ABC)	Discard
		Bolt	AN177H16 (DFG)	Discard
		Bolt	AN177-16A (E)	Discard
MS20002C7	2	Washer		
MS20002-7	4	Washer	AN960-716	Discard
RMLH6422T070	2	Nut	AN310-7 (ABC)	Discard
(ALT. LH7461T070D)				
		Cotter Pin	AN381-3-16 (ABC)	Discard
		Nut	MS21040-7 (DFG)	Discard
		Nut	NAS679A7 (E)	Discard
51499-2		A/R	Shim	
51499-4		A/R	Shim	
51499-6		A/R	Shim	

Figure 1



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-62082; FRL 3658-9]

Polychlorinated Biphenyls; Wet Weight/Dry Weight Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the PCB regulations by adding the phrase "on a dry weight basis," to § 761.1(b). This phrase was inadvertently omitted from the PCB final rule that was published in the *Federal Register* on Tuesday, July 10, 1984 (49 FR 28172). This addition is in line with historical EPA policy and will alleviate any confusion that may have been created by the omission.

DATES: Comments must be submitted on or before May 7, 1990.

ADDRESS: Comments should reference the docket number "OPTS 62082", and be sent in triplicate to: TSCA Public Docket Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, G004, NE Mall, 401 M St., SW., Washington, DC 20460. All written comments will be available for public inspection and copying in the TSCA Public Docket Office, Rm. NE G004, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202-554-1404), TDD: (202-554-0551).

SUPPLEMENTARY INFORMATION: EPA is proposing this rule to clarify the applicability of the Wet Weight versus Dry Weight determinations in assessing the level of PCB concentration.

I. Authority and Background

This proposed rule is issued pursuant to section 6(e)(1) of TSCA. Section 6(e)(1)(A) gives the Administrator the authority to promulgate rules prescribing the methods for disposal of PCBs. The phrase "on a dry weight basis", which indicates the method by which PCB concentrations are determined, was originally reported on May 24, 1977, in a proposed rule, entitled "Polychlorinated Biphenyls (PCBs), Toxic Substance Control" (42 FR 26564), which is referred to as the Proposed Disposal and Marking Rule. The phrase appeared in

§ 761.2(v), in the definition of "PCB Mixture" as follows:

'PCB Mixture' means any mixture, except municipal sewage treatment sludge, which contains 0.05 percent (on a dry weight basis) or greater of a PCB chemical substance, and includes dielectrics, contaminated solvents and oils, or rags, soil, paints and debris.

EPA chose this requirement during the rulemaking process for the proposed rule, which included several opportunities for public comment: four informal hearings, two public meetings, and the opportunity for interested parties to submit written comments and documents. At the public meeting held on January 24, 1977, the EPA addressed the dry weight/wet weight issue (in the second question posed at the meeting) by requesting comments on the inquiry.

What is the definition of PCBs for marking, disposal and manufacturing ban regulations? The Agency has under consideration definitions on the following classes of PCBs: PCB Liquids: A PCB liquid is defined as any homogenous liquid containing an aggregate concentration of all PCB isomers 10 percent (by weight) or greater. PCB Mixture: A PCB mixture is defined as any fluid, solid or multiphase substance containing an aggregate concentration of all PCB isomers of 0.05 percent (by weight) or greater, except for substances categorized as PCB liquids.

EPA then used the comments, documents, and technical reports submitted by the public in response to this question, and others, to draft the proposed rule. An EPA support document entitled, "PCB Marking and Disposal Regulations Final Action - Technical Support Document", which summarized the public comments, indicates that no public comments were received specifically addressing either the phrase "by weight", which was included in the question posed at the public meeting, or the phrase "on a dry weight basis", which appeared in the text of the proposed rule.

The phrase, "on a dry weight basis" appeared in the March 15, 1977, fifth draft of the proposed Disposal and Marking rule. Prior to that draft, the parenthetical phrase had read, "by weight". This change is a result of two work group meetings whose agendas respectively included the topics, "Analytical Methods for PCBs", and "Analytical Chemistry Methods for PCBs".

An Official Rulemaking Record contained in the Final Disposal and Marking Rule, published on February 17, 1978, (43 FR 7150), referenced several EPA technical documents, all of which were used in the rulemaking process, and many of which referenced a technique requiring the determination of the concentration of PCBs in a wet

sample to be based on the concentration of the dry weight of the sample. In addition, cited in the final rule is the document entitled "ANSI Standards: Guidelines for Handling and Disposal of Capacitor and Transformer-Grade Askarels Containing Polychlorinated Biphenyls" ANSI-C 107.1-1974, (Rulemaking Record O-File). The ANSI Standards include PCB analysis methods, which calculate PCB concentrations on a dry weight basis, in Appendices B 4.5.2 and B 4.6. These facts, coupled with the workgroup agenda, indicate that the workgroup referred to several referenced documents, and concluded that the proper method for PCB determinations was on a dry weight basis, and then included those exact words in both the Proposed Disposal and Marking Rule and the Final Disposal and Marking Rule.

On August 2, 1978, EPA published an "Addendum to Preamble and Corrections to Final Rule", (43 FR 33918), to amend the final Disposal and Marking Rule. There were no corrections in the addendum which would have either rescinded or deleted the phrase "on a dry weight basis".

The next time the phrase "on a dry weight basis" occurs is in a June 7, 1978 proposed rule, entitled, "Manufacturing, Processing, Distribution in Commerce, and Use Bans", (43 FR 24802), which is referred to as the Proposed Ban Rule. The Proposed Ban Rule underwent an enormous amount of public scrutiny, due to the proposed changes in the PCB regulatory limit—from 500 ppm to 50 ppm. Although numerous comments were received addressing the proposed limit reduction, no comments were received addressing the parenthetical phrase, "on a dry weight basis".

Subsequently, when the Final Ban Rule was published, on May 31, 1979, the phrase, "on a dry weight basis", was moved from the "Definitions" section (formerly § 761.2, now § 761.3) to the "Applicability" section (§ 761.1). However, the phrase remained unchanged, and the PCB concentration was still required to be determined "on a dry weight basis".

The phrase "dry weight basis" was not changed in the proposed rule of December 8, 1983 (48 FR 55076), also known as the Uncontrolled Rule. This rule allowed for the use of certain PCB items and did not address the disposal of PCBs. However, in the Notice of Final Rulemaking in the July 10, 1984 Uncontrolled Rule, (49 FR 28172), the parenthetical phrase, "on a dry weight basis" was inadvertently omitted from the "Applicability" section (§ 761.1).

EPA has concluded that this deletion was a drafting error, because had the omission been calculated and intentional, EPA would have thoroughly discussed it in the preamble to the Final Uncontrolled Rule.

The proposed rule included the phrase in the general applicability section, but did not use the phrase in the sections authorizing the use of PCBs in heat transfer systems and hydraulic systems. In the final rule, the use of the phrase was reversed: "dry weight basis" no longer appeared in the applicability section, but it did appear in the sections authorizing the use of PCBs in heat transfer systems and hydraulic systems.

EPA has maintained as a matter of regulatory interpretation that PCB concentrations should be determined on a dry weight basis. Determining the concentration of PCBs on a wet weight basis would result in the reporting of a diluted concentration of PCBs, which is strictly prohibited in 40 CFR 761.1(b). PCB levels must be reported according to their original concentration before their dilution. It is a common policy throughout EPA to require that testing be appropriate for the purpose and the type of chemical matrix such that the sample integrity is not compromised in any way.

For example, specifically regarding sludges, it is a generally accepted procedure to measure the concentration of PCBs in a sludge matrix, with water as the aqueous phase, by using the "dry weight basis" method as described in greater detail in 40 CFR part 136: Guidelines Establishing Test Procedures for the Analysis of Pollutants, under the Clean Water Act, which was published in the *Federal Register* on October 26, 1984.

Additionally, the term "dry weight basis" is described by EPA as the preferred method for reporting the concentration of PCBs in sludges in the manual, "Analytical Methods for the National Sewage Sludge Survey", Sections 16.1.3 and 16.2.3, published by the Office of Water in March of 1983.

II. Proposed Change

To rectify the inadvertent omission, EPA proposes to amend § 761.1(b) to reinsert the deleted phrase, "on a dry weight basis", to reinforce EPA's strict past and present policy of non-dilution.

III. Rulemaking Record

Materials used in this rulemaking are available for inspection at the TSCA Public Docket Office, in Room NE-G004, 401 M St., SW., Washington, DC 20460. The following documents for this rulemaking are in the public record:

(1) "Polychlorinated Biphenyls (PCBs), Toxic Substance Control", (Proposed Disposal and Marking Rule), Docket No. 68005, May 24, 1977 (42 FR 26564).

(2) "Polychlorinated Biphenyls (PCBs), Disposal and Marking", (Final Disposal and Marking Rule), Docket No. 68005, February 17, 1978, (43 FR 7150).

(3) "ANSI Standards: Guidelines for Handling and Disposal of Capacitor and Transformer-Grade Askarels Containing Polychlorinated Biphenyls", ANSI-C 107.1-1974, Docket No. 68005, Rulemaking Record O-File.

(4) Minutes of the Public Meeting, January 24, 1977, Docket No. 68005.

(5) "PCB Marking and Disposal Regulations Final Action - Technical Support Document", Docket No. 68005.

(6) "Polychlorinated Biphenyls (PCBs), Toxic Substance Control" Draft Copies, Docket No. 68005.

(7) "Addendum to Preamble and Corrections to Final Rule", Docket No. 68005, August 2, 1978, (43 FR 33918).

(8) "Manufacturing, Processing, Distribution in Commerce, and Use Bans", (Proposed Ban Rule), Docket No. 60001, June 7, 1978, (43 FR 24802).

(9) "Polychlorinated Biphenyls; Criteria Modification; Hearings", (Final Ban Rule), Docket No. 60001, May 31, 1979, (44 FR 31514).

(10) "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations", (Proposed Uncontrolled Rule), Docket No. 62032, December 8, 1983, (48 FR 55076).

(11) "Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations", (Final Uncontrolled Rule), Docket No. 62032, July 10, 1984, (49 FR 28172).

IV. Other Regulatory Requirements

A. Executive Order

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this proposed rule is not a major rule as defined in section 1(b) of the Executive Order. This proposed rule has no effect on the economy, because it imposes no additional obligations upon the regulated community. The purpose of this proposed rule is to reinsert an inadvertently deleted phrase which will clarify how PCB concentrations are to be determined. Thus, the proposed rule has no economic consequences and is not a major rule under the Executive

Order. A regulatory impact analysis is therefore not required.

B. Regulatory Flexibility Act

Section 605(b) of the Regulatory Flexibility Act, (15 U.S.C. 601 et seq. Pub. L. 96-534, September 19, 1980) requires EPA to prepare and make available for comment a regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small business entities. If, however, a regulation will not have a significant impact on a substantial number of small entities, no such regulatory impact analysis is required.

The effect of this rulemaking will be to simply reinsert a phrase to clarify a requirement. Thus, this rule has no impact on small entities. I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 et seq., authorizes the Director of the Office of Management and Budget (OMB) to review certain information collection requests by Federal agencies. There are no requirements in this rule that qualify as a "collection of information" as defined in 44 U.S.C. 3502(4).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: March 30, 1990.

Victor J. Kimm,
Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, part 761 is proposed to be amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

2. In § 761.1 by revising paragraph (b) to read as follows:

§ 761.1 Applicability.

* * * * *

(b) This part applies to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items. Substances that are regulated by this rule include, but are not limited to, dielectric fluids, contaminated solvents, oils, waste oils,

heat transfer fluids, hydraulic fluids, paints, sludges, slurries, dredge spoils, soils, materials contaminated as a result of spills, and other chemical substances or combination of substances, including impurities and byproducts and any byproduct, intermediate or impurity manufactured at any point in a process. Most of the provisions of this part apply to PCBs only if PCBs are present in concentrations above a specified level. For example, subpart D applies generally to materials at concentrations of 50 parts per million (ppm) and above. Also certain provisions of subpart B apply to PCBs inadvertently generated in manufacturing processes at concentrations specified in the definition of "PCB" under § 761.3. PCB concentrations under this part shall be determined on a dry weight basis. No provision specifying a PCB concentration may be avoided as a result of any dilution, unless otherwise specifically provided.

[FR Doc. 90-8028 Filed 4-5-90; 8:45 am]
BILLING CODE 6560-50-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-176, RM-7053]

Radio Broadcasting Services; Columbia, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Eric R. Hilding, seeking the allotment of FM Channel 255A to Columbia, California, as that community's first local broadcast service. Coordinates for this proposal are 38-02-11 and 120-24-01.

DATES: Comments must be filed on or before May 24, 1990, and reply comments on or before June 8, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Eric R. Hilding, P.O. Box 1700, Morgan Hill, CA 95038-1700.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-176, adopted March 16, 1990, and

released April 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-7921 Filed 4-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-174, RM-7055, RM-7115]

Radio Broadcasting Services; El Rio and Ojai, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually-exclusive petitions for rule making in the state of California. The first, filed by Susan M. Ciborosky (RM-7055), seeks the allotment of FM Channel 279A to El Rio, California, as that community's first local broadcast service. The second proposal, filed by Eric R. Hilding, requests the allotment of FM Channel 279A to Ojai, California, as that community's second local FM broadcast service. Coordinates are, for El Rio, 34-14-33 and 119-12-17, and for Ojai, 34-26-53 and 119-12-27.

DATES: Comments must be filed on or before May 24, 1990, and reply comments on or before June 8, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners as follows: Susan M. Ciborosky, 1608 Highland Avenue, Hubertus, MI 53033, and Eric R. Hilding, c/o Hilding Communications, P.O. Box 1700, Morgan Hill, CA 95038-1700.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-174, adopted March 16, 1990, and released April 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-7920 Filed 4-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-175, RM-7112]

Radio Broadcasting Services; Goleta, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Eric R.

Hilding and Miklos Benedek, seeking the allotment of FM Channel 290A to Goleta, California, as that community's second local FM service. Coordinates for this proposal are 34-28-30 and 119-58-00.

DATES: Comments must be filed on or before May 24, 1990, and reply comments on or before June 8, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554 in addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Eric R. Hilding & Miklos Benedek, c/o Hilding Communications, P.O. Box 1700, Morgan Hill, CA 95038-1700.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-175, adopted March 16, 1990, and released April 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 90-7923 Filed 4-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-177, RM-7116]

Radio Broadcasting Services; Susanville, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Susan M. Ciborosky, seeking the allotment of FM Channel 242C2 to Susanville, California, as that community's second local broadcast service. Coordinates for this proposal are 40-28-55 and 120-44-20.

DATES: Comments must be filed on or before May 24, 1990, and reply comments on or before June 8, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner and her consultant, as follows: Susan M. Ciborosky, 1808 Highland Avenue, Hubertus, WI 53033, and Larry G. Fuss, Contemporary Communications, P.O. Box 159, Fayetteville, GA 30214 (consultant).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-177, adopted March 16, 1990, and released April 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR part 73

Radio broadcasting.

Federal Communications Commission.
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.
[FR Doc. 90-7922 Filed 4-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-294, RM-6138, RM-6474, RM-6489]

Radio Broadcasting Services; Angola, Berne, Decatur, Lagrange, and Roanoke, IN; and Brooklyn, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; request for supplemental information and order to show cause.

SUMMARY: The Commission is issuing a Request for Supplemental Information in the above-referenced proceeding to Midwest Communications Company (MCC), licensee of Station WQTZ(FM), Decatur, Indiana, which seeks to substitute Channel 286B1 for Channel 224A at Decatur, and to modify its license accordingly. MCC is requested to indicate its willingness to reimburse Station WIFF-FM, Auburn, Indiana, which is required to vacate Channel 288A at Auburn to accommodate the Decatur proposal. MCC's proposal also requires the substitution of Channel 224A for Channel 230A at Berne, Indiana, for which an application is pending. The substitution of Channel 231A for Channel 286A at Roanoke, Indiana, for which a permit has been issued to Judith A. Selby (Selby), is also required to accommodate MCC's modification proposal at Decatur. Therefore, this document also directs Selby to show cause why her permit should not be modified to specify operation on Channel 231A at Roanoke. Coordinates for Decatur, Channel 286B1, and 40-58-33 and 85-04-23, for Berne, Channel 224A, 40-40-46 and 84-57-17, and for Roanoke, Channel 231A, 40-55-00 and 85-27-30.

The Request for Supplemental Information and Order to Show Cause do not afford additional opportunity either to comment on the merits of the proposal or for the acceptance of additional counterproposals. The "cut-off" protection established in the Notice applies in both circumstances.

DATES: Comments must be filed on or before May 24, 1990, and reply comments on or before June 8, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, parties should serve the petitioner's counsel, as follows: Earl R. Stanley, Kenneth E. Satten & Christine V. Simpson Esqs., Wilkinson, Barker, Knauer & Quinn, 1735 New York Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Request For Supplemental Information and Order to Show Cause, MM Docket No. 88-284, adopted March 15, 1990, and released April 2, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 90-7919 Filed 4-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-173, RM-7171]

Radio Broadcasting Services; Doolittle, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal filed by Howard Smith requesting the allotment of FM Channel 264A to Doolittle, Missouri, as that community's first local service. There is a site restriction 10.1 kilometers (6.3 miles) west of Doolittle. The coordinates for Channel 264A are 37-56-33 and 91-59-45.

DATES: Comments must be filed on or before, May 25, 1990, and reply comments on or before June 11, 1990.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard Smith, 3309 S. Franklin, Springfield, Missouri 65807.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-173, adopted March 15, 1990, and released April 3, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 90-7918 Filed 4-5-90; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-299; RM-6961]

Radio Broadcasting Services; Lopez and Dushore, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the request of Robin H. Thomas to allot Channel 233A to Lopez, Pennsylvania, as its first local FM service. The Commission concluded that Lopez is not a "community" for allotment purposes. The counterproposal of Stewart C. West seeking the allotment of Channel 233A to Dushore, Pennsylvania, was not considered as he failed to serve a copy of the pleading on the petitioner as required by § 1.420 of the Commission's Rules. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-299, adopted March 15, 1990, and released April 4, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 90-7917 Filed 4-5-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 220 and 252

Federal Acquisition Regulation Supplement; Labor Surplus Area Concerns; Correction

ACTION: Proposed rule and request for comment, correction.

SUMMARY: This document corrects a proposed rule on Labor Surplus Area Concerns, which was published in the Federal Register on March 22, 1990 (55

FR 10637). This action is necessary to add a statement to the preamble, to add amendatory language and to remove text.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, telephone (202) 697-7266.

Linda E. Green,
Deputy Director, Defense Acquisition
Regulatory Council.

Accordingly, the Department of Defense is correcting 48 CFR parts 220 and 252 as follows:

On page 10637, the preamble is corrected to change the first sentence of the second paragraph of "A. Background" under "Supplementary Information" to read: "Part 220 of the DFARS and related clauses in part 252 have been deleted, partially because the text duplicates coverage in the FAR," and the following is added at the end of the amendatory language:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

§§ 252.220-7000 and 252.220-7001
[Removed]

3. Sections 252.220-7000 and 252.220-7001 are removed.

[FR Doc. 90-8010 Filed 4-5-90; 8:45 am]

BILLING CODE 3310-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-10; Notice 3]

RIN 2127-AC25

Federal Motor Vehicle Safety Standards; Power-operated Window Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Standard No. 118, *Power-operated Window Systems* in several respects. First, the notice proposes to extend Standard No. 118 to include power-operated roof panels. Second, the notice proposes minimum force levels to activate external key-locking systems. In addition, the proposal would permit power windows to be operable from outside a vehicle by non-key systems or remote control systems. The notice proposes force levels related to the activation of such non-key locking systems and would require any remote

control system to reverse automatically upon encountering resistance.

DATES: Comments on this notice must be received on or before May 21, 1990.

ADDRESSES: All comments on this notice should refer to Docket No. 87-10; Notice 3 and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Rutland, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590; (202) 366-5267.

SUPPLEMENTARY INFORMATION:

Background

This notice proposes several changes to Standard No. 118, *Power-operated Window Systems* (49 CFR 571.118). The Standard's purpose is to minimize the risk of personal injury that may result if someone is caught between a closing power-operated window and the window frame. The agency's experience is that children are the group of people most likely at risk of injury from inadvertent or unsupervised operation of power windows.

On October 16, 1987, NHTSA published a notice of proposed rulemaking (NPRM) proposing several changes to Standard No. 118. (49 CFR 571.118). (52 FR 38488). These proposed amendments included extending the standard to light trucks, eliminating the limitations on the circumstances in which power windows may be opened, and eliminating the requirement that power windows be operable outside of a vehicle only with a key-locking system. Additionally, there was discussion of completely eliminating the provision for an external operating mechanism of any type in light of injuries involving these systems. The effect of eliminating this provision would be that an exterior control could lower, but not raise, a power-operated window.

NHTSA received 18 comments on the proposed changes to the 1987 NPRM. Eleven commenters were motor vehicle manufacturers or related organizations, six were individuals, and one was an injury research center.

On June 24, 1988, NHTSA issued a final rule amending certain provisions in Standard No. 118. (53 FR 23766). In particular, it extended the standard's applicability to light trucks and restricted the requirements to the closing of power windows; in other words, the standard would no longer regulate the opening of power windows. Although the final rule did not

implement requirements based on the remaining issues raised in the NPRM, the agency noted that those issues would be addressed in a subsequent NPRM. These issues include the following: (1) Deleting the word "key" from the term "key-locking system" in paragraph S3(c) so as to expand the design options for external power window controls; (2) deleting paragraph S3(c) altogether, thereby prohibiting external controls on the vehicle for closing power windows; and (3) extending Standard No. 118 to cover power-operated sunroofs.

Proposed Amendments

After reviewing the relevant comments to the 1987 NPRM and undertaking a further review, NHTSA has decided to propose the following provisions: (1) An amendment to apply the purpose and scope section (S1) to "roof panels," (2) an amendment of the requirements related to key-locking systems in the current standard (S3(c)) to include minimum force levels, (3) new requirements to permit locking systems that do not rely on conventional keys (which this notice will refer to as "non-key locking systems"), and (4) new requirements to permit remote control systems if the devices have a safety-reversal feature.

A. Roof Panels

The purpose and scope section (S1) and operating requirements (S3) currently refer to power-operated window and partition systems. The 1987 NPRM proposed to extend the requirements to include power-operated roof panels, which are commonly referred to as "sun roofs." Most comments to the original NPRM docket endorsed the agency's proposal to extend the standard. Chrysler stated that the wording should be such that power-operated convertible roofs do not fall under the standard.

In the 1988 final rule, NHTSA decided to defer a decision about this proposal until the agency addressed the issue of non-key locking systems. The agency explained that non-key systems have already been developed for power roof systems but power roofs currently are not subject to the standard. Therefore, some systems might have had to be redesigned if the final rule had extended FMVSSs 118's requirements to roof panels.

Since this notice is now proposing requirements related to non-key systems, the agency believes it would be beneficial to reconsider extending the standard to roof panels. The agency notes that roof panels pose the same

potential dangers as power-operated windows and partition systems. (For ease of reference, the notice hereafter refers to power-operated windows, partition systems, and roof panels, as "power-operated windows"). Accordingly, the agency believes that including roof panels in sections S1 and S3 would ensure that all power-operated windows are treated equally and provide equivalent levels of safe operation.

B. Force Requirements for Key-Activated Systems

Currently, the requirements for key-activated systems on the exterior of the vehicle does not contain any force requirements. The agency tentatively believes that to ensure safe operation of a power-operated window the torque applied to the key to close the window must be high enough to prevent young children from operating it. On the other hand, the torque level must not be so high as to make normal operation difficult for adults. Based on these considerations, the agency has tentatively determined that the torque necessary to operate the key should be at least 4.5 in-oz applied continuously (i.e., the window closes only when the torque is continuously applied at or above the 4.5 in-oz level and stops if the torque is less than this level).

In determining the appropriate torque level necessary to protect children, the agency reviewed existing devices and studies. For instance, one external electric switch for tailgate windows is designed to require a torque of 1.5 in-oz, a level that permits activation by young children. The agency is therefore proposing a higher torque level. The agency used as one source of information on torque levels the 1972 Edition of the *Human Engineering Guide to Equipment Design*, [Chapter 8, Design of Controls] [Library of Congress Catalog Card Number 72-600054.] This source shows that the recommendation for the design of knob controls with fingertip control is that the torque should be no more than a maximum of 4.5-6.0 in-oz, depending on the size of the knob. The key diameter is roughly equivalent to that of the lower value—4.5 in-oz for a one inch diameter knob. Thus, the agency proposes that a minimum torque of 4.5 in-oz be required to operate a device. The agency seeks comment on whether the 4.5 in-oz requirement would prevent operation by young children. Are there any guide books which include torque or other force levels for such children? Alternatively, are such torque requirements necessary at all or would

requiring the constant application of force be adequate?

C. Current Section S3c

Section S3(c) currently allows power-operated windows to be closed "upon activation by a key-locking system on the exterior of the vehicle." In response to the 1987 NPRM requesting comments about whether the agency should eliminate S3(c) and thus prohibit any external key locking system, virtually all the relevant comments stated that such an amendment would be inappropriate given the lack of data that such systems present an unreasonable safety risk. After reviewing this matter, NHTSA agrees with the commenters that a ban on all external power-operated window control systems would be inappropriate.

In their comments to the 1987 NPRM, manufacturers stated that they were concerned that section S3(c) needlessly prohibited innovative exterior power-operated window systems. They interpreted the word "key" to mean that a conventional key-based system is the only permissible way of meeting S3(c) and the phrase "on the exterior of the vehicle" to mean that the device must be physically attached to the vehicle. The agency agrees that this interpretation is correct. Because the agency tentatively believes that the current requirement may artificially restrict technological innovation without an adequate safety justification, the agency is proposing to allow external power-operated window closing by either non-key locking systems or remote control systems. Proposed requirements related to each system's operation will be explained below.

1. Expanding the Standard To allow External "Non-key Locking" Systems

NHTSA has considered different types of external "non-key" locking systems. It is aware that manufacturers are already developing several types of non-key locking devices including touch pads on the vehicle, infrared type actuators, and credit card systems. The agency emphasizes that this list is not exhaustive and that the proposal would allow any type of non-key locking system that complies with the proposed requirements.

The agency tentatively believes that the following safety criteria are necessary to prevent a young child from activating a non-key locking system. A minimum positive force would have to be applied to the control to begin closing the window and the minimum force would have to be continuously applied (i.e., the window would close only if the force were applied at the minimum level and would stop or reverse if the force

were less than the minimum). These criteria would prohibit the use of a single-touch control and would require that anyone desiring to close a power window or roof through external means do so through a sustained effort. The agency invites comments on whether the requirements are appropriate for non-key locking systems.

In determining an adequate force activation level of external control devices, the agency considered force requirements in current standards. For instance, section S5.4.3.5 of Standard No. 213, *Child Restraint Systems*, requires a buckle not to release when a force of less than 9 pounds is applied and to release when a force of not more than 14 pounds is applied. The agency relied on a study entitled "Child Restraint Systems" by Peter Arnberg of the National Swedish Road and Traffic Institute, which examined force release levels for children aged 2½ to 4½ years and adult women. (See Docket No. 74-09). The study concluded that child restraint buckles should have a release force of 40 to 60 newtons, which is approximately 9 to 13½ pounds. While the 9 pound minimum release force is intended to prevent activation by children under four years old, the 13½ pound maximum release force (which the standard increased to 14 pounds) is intended to ensure that certain adults were able to release the buckle. (50 FR 33722, August 21, 1985). Similarly, the United States Consumer Product Safety Commission requires a force level of at least 10 pounds to activate a crib release mechanism to protect a child "within a crib;" no upper level is specified. (16 CFR 1508.6 and 1509.7; see also 38 FR 32129).

Based on the current standards, NHTSA has decided to propose a force activation level for external non-key locking systems of at least 9 pounds. The agency tentatively believes that requiring a force level of 9 pounds to be applied continuously would be adequate to prevent children from operating a power window system. The agency notes that requiring a higher force activation level might result in controls that were excessively difficult to operate. For instance, certain less strong adults and others with handicaps might have difficulty in activating the buttons, if the force level were set higher. Nevertheless, the agency has also decided not to propose a maximum force level because unlike the buckle release requirement which raised safety concerns about release in emergency situations, the power-window rulemaking primarily concerns convenience. The agency invites

comment on whether 9 pounds is the appropriate force level and whether a maximum permissible force level would be beneficial.

The agency also tentatively believes that the force should be continuously applied to ensure the safe closing of such externally controlled power windows. Such a requirement would help ensure that closing a power window was a conscious act. For instance, it would prevent an adult from activating the external non-key locking device and then moving away from the closing power window. Based on the above considerations, the agency is proposing S3.1(d) to require that an exterior non-key locking system could only close a power window if a continuous force of at least 9 pounds were applied.

NHTSA notes that there may be other devices to help child-proof power window closing systems. For instance, an electronic alpha-numeric touch pad system serving as a combination lock, might make the operation of such systems child-proof. The agency invites comments about this and other systems that would be difficult for children to operate, thus serving to prevent a child from closing a power window system. The agency also invites comments concerning whether a force requirement would be appropriate for such systems.

2. Expanding the Standard to Allow Remote Devices.

As mentioned above, section S3(c) currently requires an external closing device to be "on" (i.e., physically attached) to the vehicle. However, NHTSA is aware of systems resembling video or audio remote control devices that could close a power window by sending a signal to the vehicle. Because remote control systems may present technical or safety problems, the agency requests comments about whether such systems should be permitted.

NHTSA believes that if a manufacturer decided to install a remote control system to close a power window, requirements would be necessary to protect against misuse by children and inadvertent use by an adult. The agency is concerned that the window could close on a person if a remote device with sufficient range were activated when not in sight of the vehicle. To minimize risks associated with remote control systems, the agency has tentatively concluded that the closing of a window by such a system should be allowed only if the manufacturer provides a feature that would stop the power window from closing and then reverse whenever the window encounters resistance. The

agency is therefore proposing to require that a window capable of being closed by a remote device must reverse direction if the window encounters an object while closing.

The agency is proposing specific criteria related to the performance of the window reversal feature. First, it would require the reversal feature to be activated if the closing window encounters a resistive force of not more than 22 pounds. This force level is based on guidelines in Germany's Road Traffic Act (No. 60 paragraph 30, section 3 StVZO; 1984) which established a level of not more than 100 Newtons ("N;" 1 newton = 0.2248 pounds) for window reversal. The agency requests comment on whether the proposed resistance force level would be appropriate to ensure safety without imposing an unnecessarily restrictive resistance requirement. A second criterion concerns specifying a zone of potential harm in which the window would have to reverse upon contact with an object. The agency tentatively believes that to protect children from having a power window close on their arms or heads, the zone of reversal should begin at 200 mm (approximately 8 inches). In addition, there is a distance at which injury from window closure is no longer possible, but at which problems could result from the window's misalignment or obstruction by ice. The agency tentatively believes that this point is 4 mm (approximately .16 inch) from a completely closed window. NHTSA invites comment concerning whether this proposed zone of danger is appropriate.

NHTSA invites comments on the possibility of allowing a window reversal feature on any non-key locking system on the exterior of the vehicle as an alternative to the proposed requirement for activation only upon application of at least 9 pounds of force to the control's actuation device. Since the agency tentatively believes that the window reversal device offers a high level of protection, it could be combined with a single actuation button on the exterior of the vehicle. The agency seeks comments on whether this alternative should be offered and if it should be used as the single requirement or combined with the 9 pound requirement.

D. Costs and Benefits

NHTSA has determined that this rule is not a major rule under Executive Order 12291 nor a significant rule within the meaning of Department of Transportation regulatory policies and procedures. Therefore, neither a regulatory impact analysis nor a full regulatory evaluation is required. Other

than the proposal to extend the standard to roof panel systems, the other proposals allowing new types of external closing systems would be optional and thus would not impose additional costs for manufacturers. The proposed changes would enhance design flexibility and user convenience.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Vehicle manufacturers typically would not qualify as small entities. This amendment would affect small businesses, small organizations, and small governmental units only to the extent that these entities purchase motor vehicles. The preceding section reflects the agency's assessment that this amendment will have no significant cost impact to the industry, and therefore it will not result in a significant increase in consumer prices.

As it is required to do under the National Environmental Policy Act of 1969, NHTSA has considered the environmental impact of this proposal and determined that this rule would not have any significant impact on the quality of the human environment.

Further, this rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it has no Federalism implication that warrants preparation of a Federalism report.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the

agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend part 571 of title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.118, S1 would be revised and S3 would be amended by revising the introductory text and paragraph (c), redesignating paragraph (d) as paragraph (f), and adding new paragraphs (d) and (e) to read as follows:

§ 571.118 Standard No. 118; Power-operated window systems.

S1. Purpose and scope. This standard specifies requirements for power-operated window, partition, and roof panel systems to minimize the risk of death or injury from accidental operation.

S3. Operating Requirements. Power window, partition, or roof panel systems may be closed only in the following circumstances:

(c) Upon activation by a key locking system attached to the exterior of the vehicle, provided that closing occurs only while the key is turned with a torque of at least 4.5 in-oz;

(d) Upon activation by any non-key locking system attached to the exterior of the vehicle, provided that closing occurs only while a force of at least 9 pounds is being applied to the control's actuation device;

(e) Upon activation by any remote device, provided that the window, partition or roof panel reverses direction when a resistive force of not more than 22 pounds is encountered at any point within 200 mm to 4 mm of total closure; or

Issued on: March 30, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-7731 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register

Vol. 55, No. 67

Friday, April 6, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Meat Import Limitations; Second Quarterly Estimate

Public Law 88-482, enacted August 22, 1964, as amended by Public Law 96-177, Public Law 100-418, and Public Law 100-449 (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.20.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), which may be imported, other than products of Canada, into the United States in any calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1990 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

As announced in the Notice published in the Federal Register on January 4, 1990 (55 FR 335), the estimated aggregate quantity of meat articles other than

products of Canada prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1990 is 1,242.0 million pounds.

In accordance with the requirements of the Act, I have determined that the second quarterly estimate of the aggregate quantity of meat articles other than products of Canada which would, in the absence of limitations under the Act, be imported during calendar year 1989 is 1,150 million pounds.

Done at Washington, DC this 31st day of March, 1990.

Clayton Yeutter,

Secretary of Agriculture.

[FR Doc. 90-7976 Filed 4-5-90; 8:45 am]

BILLING CODE 3410-10-M

Forest Service

Rock Creek-Cresta Dredging Project; Notice of Intent

AGENCY: Forest Service, Department of Agriculture.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the USDA Forest Service and Plumas County will prepare a joint Environmental Impact Statement—Environmental Impact Report (EIS/EIR) to disclose the environmental consequences of the proposed Rock Creek-Cresta Dredging Project. This project would be located on the North Fork of the Feather River approximately 20 miles southwest of Quincy, California. The project is within the Plumas National Forest, Plumas County, California. The Forest Service invites written comments on this proposal. A full environmental analysis will be conducted. The Draft EIS/EIR will be published in June, 1990, and the Final EIS/EIR will be available for review in September, 1990.

ADDRESSES: Submit written comments to Mary J. Coulombe, Forest Supervisor, Plumas National Forest, P.O. Box 11500, Quincy, California 95971.

FOR FURTHER INFORMATION CONTACT: R.C. Bennett, Planning Officer, Plumas National Forest, P.O. Box 11500, Quincy, California 95971, phone 916-283-2050.

SUPPLEMENTARY INFORMATION: The Pacific Gas and Electric Company (PG&E) is proposing to dredge

approximately 500,000 cubic yards of accumulated sediment from each of the downstream portions of the Rock Creek and Cresta Reservoirs. Sediment would be transported to Rodgers Flat, which is located between the two reservoirs, where it would be deposited as an engineered fill on land administered by both PG&E and the Forest Service. A range of alternatives for this project will be considered, one of which will be a no action alternative.

Mary J. Coulombe, Forest Supervisor, Plumas National Forest, Quincy, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service and Plumas County will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the Draft EIS/EIR. The scoping includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental review.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed project area.

The Draft EIS/EIR is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 1990. At that time EPA will publish a notice of availability of the Draft EIS/EIR in the Federal Register.

The comment period on the Draft Environmental Impact Statement—Environmental Impact Report will be 45

days from the date the Environmental Protection Agency's Notice of Availability appears in the *Federal Register*. It is very important that those interested in the management of the proposed Rock Creek-Cresta Dredging Project participate at that time. To be the most helpful, comments on the Draft EIS/EIR should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

After the comment period for the Draft EIS/EIR ends, the comments received will be analyzed and considered by the Forest Service and Plumas County in the preparation of the Final Environmental Impact Statement—Environmental Impact Report. The Final EIS/EIR is scheduled to be completed by September, 1990. In the Final EIS/EIR the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the EIS/EIR, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR part 217.

Dated: March 20, 1990.

Mary J. Coulombe,

Forest Supervisor, Plumas National Forest.

[FR Doc. 90-7957 Filed 4-5-90; 8:45 am]

BILLING CODE 3410-11-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1990 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 7, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On January 26, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (55 FR 2677) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

Comments on this proposed addition were received from the current contractor for these commodities and two members of Congress on behalf of that contractor. The current contractor indicated that the addition of the two plastic bags to the Procurement List would have serious adverse impact on its sales, employment and profitability.

The Committee recognizes that some impacts are a necessary consequence of its operations, and carefully considers the overall impact of each of its actions. The Committee has determined that the addition of these bags to the Javits-Wagner-O'Day program would not have a severe adverse impact on the current contractor. The Committee also considered concerns expressed about the loss of employment in arriving at its decision to add these bags to the Procurement List. The Committee has determined that the employment gains for blind persons outweigh the possible loss of employment by persons who are not blind and who do not have severe disabilities.

The current contractor indicated that a major portion of the cost of the plastic bags will flow to subcontractors of the workshop. He concluded that this would result in the workshop's not being the true beneficiary of the government's business and, therefore, in a direct conflict with the underlying intent of the JWOD Act. It is not unusual for the cost of raw materials to represent a

significant portion of the cost of the manufactured end item. The workshop will perform basically the same manufacturing operations as the current contractor; thus, the relationships between its raw materials and other costs would not be dissimilar from that of the current contractor or any manufacturer of these plastic bags. The intent of the JWOD Act is to create employment opportunities for blind and severely handicapped individuals, not to benefit a given workshop or its suppliers. This action will create six work years of employment for blind individuals in fulfillment of that purpose.

The current contractor also questioned the ability of blind workers to perform the manufacturing functions required to produce the plastic bags and stated that any attempt by blind workers to operate the machines would subject them to possible serious injury. He further questioned whether the workshop had met its burden of establishing that 75% of the direct labor to produce the plastic bags will be supplied by blind workers as required by the Act.

In response to a request by a Senator on behalf of the contractor, the Committee staff addressed the question of whether blind workers could produce the bats. This was accomplished by conducting an on-site review of the operations performed by blind workers in producing bats that are identical to those in question except for size. At the time of the on-site review, an employee of the contractor was permitted to tour the workshop and given a limited amount of time in which to submit supplemental comments related to this issue. Additional comments were received from the contractor, including questions about the classification of work as direct or indirect labor, the ability of blind workers to operate a particular machine, and whether the nature of the work being performed by blind workers was consistent with the Congress's intent in establishing the JWOD program.

With respect to the ability of the blind workers to produce bats, the three similar bats have been produced by the workshop for over a year, during which time blind workers have produced over 58 million without injury. The National Industries for the Blind and its affiliated workshops have had extensive experience in modifying and guarding potentially dangerous equipment so that it can be operated safely and effectively by blind workers. The operation of the plastic bag equipment presents fewer opportunities for serious injury than the

equipment operated safely by blind persons in a number of other producing workshops for the blind such as those involving metal stamping and heavy duty cutting operations.

Although the workshop expects that 100% of its direct labor will be performed by blind workers, there is no requirement that at least 75% of the direct labor required to produce an individual item be performed by blind individuals. The only requirement contained in the Act (41 U.S.C. 46-48c) regarding the employment of blind persons is that legally blind persons must perform 75% of the total direct labor hours performed in the workshop during each fiscal year. The workshop complies fully with that requirement. Moreover, the Committee staff's on-site review confirmed that 100% of the direct labor on the three similar bags already in production was being performed by individuals who meet the definition of "blind" contained in the JWOD Act. With regard to the supplemental comments provided by the contractor, the Committee has confirmed that the workshop is properly classifying work as direct or indirect labor and that, although it is not necessary under the JWOD rules, the particular machine cited by the contractor can and is intended to be operated by a legally blind employee.

The Committee is considering the suitability of a particular proposal also takes into account the nature of the work to be generated for persons who are blind or have other severe disabilities. In this case, it is satisfied that the functions involved are appropriate and sufficient.

Another senator, in his comments, reiterated some of the points raised by the current contractor. In addition, he stated that the workshop's prices for the three bags previously added to the Procurement List ranged from 30% to 47% more than the price charged by the current contractor for those bags. When those bags were added to the Procurement List the fair market price was 5% above the award price at that time. Subsequent price changes have been based on changes in workshop cost and the market since those bags were added to the JWOD program.

After consideration of the material presented to it concerning the capability of a qualified workshop to produce this commodity at a fair market price and the impact of the addition on the current or most recent contractor, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6. I certify that the following actions

will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- The actions will not have a serious economic impact on any contractors for the commodities listed.
- The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1990:

Bag, Plastic.

8105-00-837-7756.

8105-00-837-7757.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-8020 Filed 4-5-90; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1990 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1990 a commodity to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 7, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 6, 1989 and February 9, 1990, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 41327, 55 FR 4653) of proposed additions to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540).

After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- The actions will not have a serious economic impact on any contractors for the commodity and services listed.
- The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1990:

Commodity

Light, Damage Control Helmet.

6230-01-285-4396.

Services

Administrative Services, Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts. Janitorial/Custodial, Federal Building, U.S. Post Office and Courthouse, 201 Jackson, Monroe, Louisiana.

Operation of the Self Service Supply Store, Environmental Protection Agency, 401 M Street SW., Washington, DC.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-8021 Filed 4-5-90; 8:45 am]

BILLING CODE 6820-23-M

Procurement List 1990 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1990 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 7, 1990.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to Procurement List 1990, which was published on November 3, 1989 (54 FR 46540):

Commodities

Igniter Assembly, Empty.

1330-01-M00-0103

(Requirements for Pine Bluff Arsenal, Pine Bluff, Arkansas only).

Apron, Protective.

6532-00-935-9765.

Services

Assembly of Tool Kit, Robins Air Force Base, Georgia.

Document Processing, Naval Air Station, Alameda, California.

Janitorial/Custodial, Federal Building and Post Office, Summerville, West Virginia.

Beverly L. Milkman,

Executive Director.

[FR Doc. 90-8022 Filed 4-5-90; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF ENERGY

Idaho Operations Office; Grant Negotiations With the City of Los Angeles, CA

AGENCY: U.S. Department of Energy.

ACTION: Intent to negotiate a grant with the Department of Water and Power of the City of Los Angeles, CA.

SUMMARY: "Test and Evaluation of Electric Vehicles." The U.S. Department of Energy (DOE) Office of Conservation and Renewable Energy through the DOE Idaho Operations Office, intends to negotiate on a noncompetitive basis, a Grant (No. 07-90ID12942.000) for approximately \$160,000 which includes a cost share of \$80,000 by DOE and \$80,000 by Department of Water and Power, City of Los Angeles, CA). The Statutory Authority for this grant is Public Law 95-224 and Public Law 97-258 to enter into discretionary financial assistance; Pub. L. 93-577, Federal Non-Nuclear Energy R&D Acts of 1974. The DOE supports work directed toward providing viable alternatives to the internal combustion engine (ICE) as an energy source for transportation. The Site Operator Program is chartered to provide assistance in the Test and Evaluation of new technologies, including vehicles and components, as they become available. The work anticipated under this grant can have a significant impact toward that goal. The

project will benefit the public in two ways. First, it will provide test and evaluation data on the two new vehicle designs, furthering the work to provide the nation with a commercially viable electric vehicle, and second, it will support the objectives of the Los Angeles Basin Clean Air Initiative to identify and test alternate fueled vehicles.

The authority for a noncompetitive financial assistance grant is based on 10 CFR 600.7(b)(2)(i) criteria (B) and (C) as explained below:

(B) This activity would be conducted by the applicant using its own resources; however, DOE support of the activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity. Although there are several other organizations performing test and evaluation of electric vehicles, none of them are, or are planning to, incorporate the two new vehicle designs included in the program.

(C) The applicant is a unit of government and the activity to be supported is related to performance of a government function within the subject jurisdiction, thereby precluding DOE provision of support to another entity.

Public response may be addressed to the contract specialist below.

Contact: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Attention: Ginger Sandwina, Contract Specialist (208) 526-8698.

Dated: March 14, 1990.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 90-8024 Filed 4-5-90; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER90-290-000 et al.]

Enron Power Enterprise Corp. et al. Electric rate, Small power production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Enron Power Enterprise Corp.

[Docket No. ER90-290-000]

March 29, 1990.

Take notice that Enron Power Enterprises Corp. (Enron Power), on March 28, 1990, tendered for filing its initial FERC Electric Service Tariff, which is a Power Purchase Agreement between itself and the New England Power Company (NEP). The Agreement provides for sales of energy and capacity from Enron Power to NEP at market-based rates.

In addition, Enron Power requests that the Commission authorize various

waivers of and simplified procedures under certain Federal Power Act regulations.

Also, Enron Power has requested that the Commission act on an expedited basis and act by May 19, 1990.

Comment date: April 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Elmer D. Gates

[Docket No. ID-2441-000]

March 30, 1990.

Take notice that on February 22, 1990, Elmer D. Gates (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Pennsylvania Power & Light Company.

Chairman, President and CEO—Fuller Company.

Comment date: April 17, 1990, in accordance with Standard Paragraph E end of this notice.

3. Union Carbide Industrial Gases Inc. and Sterling Chemicals, Inc.

[Docket No. QF90-111-000]

March 30, 1990.

On March 21, 1990, Union Carbide Industrial Gases Inc. and Sterling Chemicals, Inc. (Applicants), of Linde Division, 39 Old Ridgebury Road, Danbury, Connecticut 06817-001, and P.O. Box 1311, Texas City, Texas 77592-1311, respectively submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Texas City, Texas. The first phase of the facility will consist of a combustion turbine generating unit and a supplementary fired heat recovery boiler. The second phase of the facility will include all the equipment included in the first phase with the addition of an extraction/condensing steam turbine generating unit. Steam produced by the facility will be used by the Applicants for process cooling through an absorption chiller, and for chemicals manufacturing. The net electric power production capacity for phase I and phase II will be 41.8 MW and 51.8 MW, respectively. The primary energy source will be natural gas. Installation of phase I of the facility will begin about January 1991.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

4. Texaco Syngas Inc.

[Docket No. QF90-112-000]

March 30, 1990.

On March 23, 1990, Texaco Syngas Inc. (Applicant), of 2000 Westchester Avenue, White Plains, New York 10630, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Daggett, California. The facility will consist of a gasification unit, a combustion turbine-generator, a heat recovery boiler, and a condensing steam turbine-generator. The thermal energy recovered from the facility, in the form of steam, will be used in an adjacent carbon dioxide plant to produce food-grade liquid carbon dioxide. The net electric power production capacity of the facility will be 92.1 MW. The primary energy source will be synthetic gas resulting from gasification of coal and sewage sludge mixture.

Comment date: Thirty days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.

5. Pennsylvania Power & Light Company

[Docket No. ER90-279-000]

March 30, 1990.

Take notice that on March 22, 1990, Pennsylvania Power & Light Company (PP&L) tendered for filing, as an initial rate schedule, a Capacity Credit Sales Agreement (Agreement) between PP&L and Atlantic City Electric Company (ACE). The Agreement provides for the sale by PP&L to ACE of Daily Generating Capacity Megawatts solely for ACE's use in Pennsylvania-New Jersey (PJM) Interconnection's planned actual installed capacity accounting.

PP&L requests waiver of the notice requirements of Section 205 of the Federal Power Act and § 35.3 of the Commission's regulations so that the proposed rate schedule can be made effective as of the earlier of the day after the date on which the Agreement is accepted for filing as a rate schedule by the Commission on June 1, 1990, the anticipated commencement of service.

PP&L states that a copy of its filing was served on ACE, the Pennsylvania Public Utility Commission, and the New Jersey Board of Public Utilities.

Comment date: April 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Co.

[Docket No. ER90-277-000]

March 30, 1990.

Take notice that Florida Power & Light Company, on March 21, 1990, tendered for filing proposed changes in its FERC Electric Tariff No. 78, Amendment Number Four to the Amended Agreement To Provide Specified Transmission Service between Florida Power & Light Company (FPL) and Seminole Electric Cooperative, Inc. (Seminole).

FPL states that under Amendment Number Four, FPL will transmit replacement power and energy for Seminole from two additional sources, the City of Starke and the City of Key West.

Copies of the filing were served upon Seminole Electric Cooperative, Inc.

Comment date: April 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-7932 Filed 4-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 1403-004, et al.]

Hydroelectric applications; Pacific Gas & Electric Co., et al; Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

- 1 a. *Type of Application:* New License.
- b. *Project No:* 1403-004.
- c. *Date Filed:* June 29, 1989.
- d. *Applicant:* Pacific Gas and Electric Company.
- e. *Name of Project:* Narrows.

f. *Location:* On the Yuba River at the U.S. Corps of Engineers; Upper Narrows Debris Dam in T16N, R6E, Mount Diablo Base and Meridian, near Mooney Flat in Nevada County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Rodney J. Strub, Room 518, 245 Market Street, San Francisco, CA 94106, (415) 972-7000.

i. *FERC Contact:* Ms. Julie Bernt, (202) 357-0839.

j. *Comment Date:* May 9, 1990.

k. *Expiration of Initial License:* July 31, 1991.

l. *Description of Project:* The existing project consists of: (1) a 1,077-foot-long concrete tunnel located at the end of the U.S. Corps of Engineers' Upper Narrows Debris Dam tunnel and outlet works leading to; (2) a 266-foot-long, 8-foot-diameter steel penstock; (3) a powerhouse containing one generating unit with a rated capacity of 12 MW; and (4) three 1,500-foot-long copper cables leading to; (5) a substation which is the point of interconnection with the applicant's interconnected transmission system. The average annual energy generation is 51.2 GWh. The estimated net investment for the project is \$3,250,000.

m. This notice also consists of the following standard paragraphs: A3, A9, B and C.

2 a. *Type of Application:* Amendment of License (New Capacity).

b. *Project No:* 2545-015.

c. *Date Filed:* March 2, 1990.

d. *Applicant:* Washington Water Power Company.

e. *Name of Project:* Spokane River Project.

f. *Location:* On the Spokane River in the counties of Spokane, Stevens, and Lincoln, Washington, near the town of Spokane. T25N R43E, Willamette Meridian and Base.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

Mr. Roger D. Woodworth, Hydro License Administrator, The Washington Water Power Company, East 1411 Mission Avenue, P.O. Box 3727, Spokane, WA 99220 (509) 482-4138.

Mr. Jerry Body, Attorney at Law, Paine, Hamblen, Coffin, Brooke & Miller, 1200 Washington Trust Financial Center, Spokane, WA 99204 (509) 455-6000.

Mr. Lee Sherline, Consultant, Leighton and Sherline, 1010 Massachusetts Avenue, NW, Washington, DC 20001 (202) 898-1122.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely on (202) 357-0842.

j. *Comment Date:* May 3, 1990.

k. *Description of Proposed Action:* The license for the Spokane River Project was issued on August 17, 1972, effective May 1, 1965, and amended July 22, 1981. The licensee proposes to make the following changes to the Monore Street Development at the Spokane River Project: (1) Replace 75 feet of exposed steel penstock with a 100-foot-long, 14-foot-diameter underground steel penstock; (2) replace the existing powerhouse with an underground powerhouse with the roof at ground level; (3) install a 25-foot-diameter, 8-foot-high removable generator cap on roof; (4) install a 15-foot-long, 8-foot-wide, 12-foot-high access structure; (5) replace the 5 generating units with a single generating unit having an installed capacity of 14,800 kW; (6) install a tailrace channel. The total installed capacity of the Monore Street development will increase from 7,200 kW to 14,800 kW, increasing the estimated average annual energy generation from 45,000,000 kWh to 117,000,000 kWh.

l. This notice also consists of the following standard paragraphs: B & C.

3 a. *Type of Application:* Amendment of License.

b. *Project No:* 2547-021.

c. *Date Filed:* January 22, 1990.

d. *Applicant:* Village of Swanton.

e. *Name of Project:* Highgate Falls.

f. *Location:* On the Missisquoi River in the County of Franklin near Highgate, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Paul V. Nolan, Esq., 6219 N. 19th Street, Arlington, VA 22205, (703) 534-5509.

i. *FERC Contact:* Ken Fearon, (202) 357-0664.

j. *Comment Date:* April 25, 1990.

k. *Description of Amendment:* The Amendment of License proposes to decrease the pond elevation from the authorized elevation of 200.0 feet USGS to 190 feet USGS. The dam crest will be at elevation 173.0 feet and contain two crest gates: one 76-foot by 17-foot, and another 66-foot by 17-foot; and two stanchion sections, each 21.2-foot by 35-foot containing stop logs used to pass high flows. The licensee states that the proposed modifications are necessary due to economic constraints.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4 a. *Type of Application:* Surrender of License.

b. *Project No:* 6687-006.

c. *Date Filed:* February 13, 1990.

d. *Applicant:* El Dorado Irrigation District.

e. *Name of Project:* Reservoir No. 3 Small Hydroelectric Project.

f. *Location:* On the existing water supply Reservoir No. 3 and the El Dorado Main No. 2, near Placerville, in El Dorado County, California, occupying lands of the United States administered by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Chuck Abraham, Senior Engineer, El Dorado Irrigation District, 2890 Mosquito Road, Placerville, CA 95667, (916) 622-4534.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely at (202) 357-0842.

j. *Comment Date:* April 27, 1990.

k. *Description of Proposed Action:* The proposed project for which the license is being surrendered would have consisted of: (1) A 100-foot-long, 30-inch-diameter penstock; (2) a powerhouse containing a single 950-kW generating unit; (3) a tailrace conduit; (4) a 1,000-foot-long, 12.4-kV transmission line; (5) a switchyard; and (6) appurtenant facilities.

The licensee states that the project is not economically feasible at this time. Construction of the project had begun.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5 a. *Type of Application:* Transfer of License.

b. *Project No:* 8761-010.

c. *Date Filed:* February 16, 1990.

d. *Applicant:* Prodek, Inc.

e. *Name of Project:* Oolagah Dam Project.

f. *Location:* On the Verdigris River in Rodgers County, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Ric Holder, Chairman, Prodek, Inc., 4880 South Lewis, Tulsa, OK 74105, (918) 744-6275.

i. *FERC Contact:* Mary Golato (tag) (202) 357-0804.

j. *Comment Date:* May 14, 1990.

k. *Description of Project:* Prodek, Inc. proposes to transfer the license for the Oolagah Dam Project No. 8761-010 to GW Hydro, Inc. The purpose of the transfer is to facilitate the development and financing of project activities. To be able to apply for transfer of license, Prodek, Inc. has already been granted a 2-year extension of time to meet various articles of the project license.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No:* 10854-000.

c. *Date Filed:* December 1, 1989.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Cataract Hydroelectric.

f. *Location:* On the Middle Branch of the Escanaba River in Marquette County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Rodney H. Carlson, 616 Shelden Avenue, Houghton, MI 49931, (906) 482-0220.

i. *FERC Contact:* Charles T. Raabe (202) 357-0811.

j. *Comment Date:* May 4, 1990.

k. *Description of Project:* The existing, operating, run-of-river project consists of: (1) A 265-foot-long, 8-foot-high concrete dam having a 185-foot-long spillway section surmounted by wood flash boards; (2) a reservoir (Cataract Basin) having a 175-acre surface area and an 875-acre-foot storage capacity at normal surface elevation 1,170 feet MSL; (3) an intake structure at the dam's right bank; (4) rock tunnels and steel penstock about 3,080 feet in length; (5) a concrete surge tank; (6) a powerhouse containing a generating unit having a capacity of 2,000-kW; (7) a 500-foot-long tailrace; (8) a 5.2-mile-long, 33-kV transmission line, and (9) appurtenant facilities. Applicant estimates that the cost of the work to be performed under the terms of the permit would be \$300,000. The project average annual generation is 4,400-MWh. Energy produced at the project is used by applicant within its distribution system.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10855-000.

c. *Date Filed:* December 1, 1989.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Hoist Hydro Project.

f. *Location:* On the Dead River near Marquette, Marquette County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Rodney H. Carlson, Vice President of Operations, Upper Peninsula Power Company, 616 Shelden Avenue, Houghton, MI 49931, (906) 482-0220.

i. *FERC Contact:* Ed Lee (202) 357-0809.

j. *Comment Date:* May 4, 1990.

k. *Description of Project:* The proposed project would consist of: (1) Two dams and reservoirs—the upper dam or Silver Lake Storage Dam

approximately 600-foot-long and 35-foot-high impounding the 1,600-acre Silver Lake Basin, and the lower dam or Hoist Storage Intake Dam approximately 2400-foot-long and 65-foot-high impounding the 4,200-acre Dead River Storage Basin; (2) a 783-foot-long conduit consisting of a 400-foot-long tunnel and 383-foot-long and 5-to-7-foot-in-diameter steel penstock leading to; (3) a brick and steel powerhouse containing one 1-MW generating unit, one 1.4-MW generating unit, and one 2-MW generating unit for a total installed capacity of 4.4 MW; (4) a 600-foot-long, 2.3-kV transmission line; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 16,800 MWh. The cost of the work and studies to be performed under the permit would be \$500,000. The site is owned by the applicant. The applicant estimates that the power generated will be utilized within its own distribution system. The project is existing and operating and was found jurisdictional under UL-87-14.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10856-000.

c. *Date Filed:* December 1, 1989.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Au Train Hydroelectric.

f. *Location:* On the Upper Au Train River in Alger County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Rodney H. Carlson, 616 Shelden Avenue, Houghton, MI 49931, (906) 482-0220.

i. *FERC Contact:* Charles T. Raabe (202) 357-0811.

j. *Comment Date:* May 11, 1990.

k. *Description of Project:* The existing, operating project consists of: (1) A 1,500-foot-long, 38-foot-high earth embankment dam having a 100-foot-long, 29-foot-high concrete spillway surmounted by 2-foot-high flashboards and having an intake structure; (2) a 4,400-foot-long, 15-foot-high levee; (3) a reservoir (Au Train Basin) having a 1,560-acre surface area and a 12,350-acre-foot storage capacity at normal surface elevation 780 feet MSL; (4) a 2,539-foot-long, 5.5-foot-diameter wood-stave and steel penstock; (5) a steel surge tank; (6) a powerhouse containing two 448-kW generating units for a total installed capacity of 896-kW; (7) a 500-foot-long tailrace; (8) a 2,500-foot-long, 2,300-v transmission line; and (9) appurtenant facilities. Applicant

estimates that the cost of the work to be performed under the terms of the permit would be \$400,000. The project estimated average annual generation is 6,300-MWh. Energy produced at the project is used by applicant within its distribution system. The project was found jurisdictional under UL 87-8.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10857-000.

c. *Date Filed:* December 1, 1989.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* McClure Hydro Project.

f. *Location:* On the Dead River near Marquette, Marquette County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Rodney H. Carlson, Vice President of Operations, Upper Peninsula Power Company, 616 Shelden Avenue, Houghton, MI 49931, (906) 482-0220.

i. *FERC Contact:* Ed Lee (202) 357-0809.

j. *Comment Date:* May 4, 1990.

k. *Description of Project:* The proposed project would consist of: (1) An existing 205-foot-long and 46-foot-high concrete dam; (2) a 150-acre reservoir; (3) an existing powerhouse containing two existing operating 4-MW generating units for a total installed capacity of 8 MW; and (4) appurtenant facilities. The applicant estimates that the average annual generation would be 52,900 MWh. The cost of the work and studies to be performed under the permit would be \$500,000. The site is owned by the applicant. The applicant estimates that the power generated will be utilized within its own distribution system. The project is existing and operating and was found jurisdictional under UL-87-15.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P-10855-000.

c. *Date Filed:* February 7, 1990.

d. *Applicant:* Grass River Stone Dam Associates.

e. *Name of Project:* Grass River Stone Dam Hydroelectric Project.

f. *Location:* On Grass River near Madrid, in St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Neal Dunlevy, 185 Genesee Street, Utica, N.Y. 13501, (315) 793-0366.

i. *FERC Contact:* Michael Dees (dmt) (202) 357-0807.

j. *Comment Date:* May 16, 1990.

k. *Description of Project:* The proposed project would consist of: (1) An existing concrete and stone dam 400 feet long and 12 feet high, and flashboards; (2) a 120-acre reservoir; (3) a powerhouse housing two 375-kW hydropower units; (5) a tailrace; (6) a 4.16-kV transmission line 200 feet long; and (7) appurtenant facilities. The applicant estimates that the annual energy generation would be 3,800 MWh and that the cost of the studies to be performed under the permit would be \$30,000. The dam is owned by the Town of Madrid, New York.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10886-000.

c. *Date Filed:* February 7, 1990.

d. *Applicant:* Mill Pond Associates.

e. *Name of Project:* Mill Pond Hydroelectric Project.

f. *Location:* On Mill Brook near Port Henry, in St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Neal Dunlevy, 185 Genesee Street, Utica, NY 13501, (315) 793-0366.

i. *FERC Contact:* Michael Dees (202) 357-0807.

j. *Comment Date:* May 16, 1990.

k. *Description of Project:* The proposed project would consist of: (1) An existing dam 100 feet long and 10 feet high and flashboards; (2) a 13-acre reservoir; (3) a powerhouse housing a single or multiple hydropower units between 2 MW and 10 MW total capacity; (4) a tailrace; (5) a 13.8-kV transmission line 200 feet long; (6) and appurtenant facilities. The applicant proposes to study the project for operation as run-of-river, peaking, or pumped storage. The applicant estimates that the annual energy generation would be 5,000 MWh and that the cost of the studies to be performed under the permit would be \$30,000. The dam is owned by Niagara Mohawk Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10893-000.

c. *Date Filed:* February 15, 1990.

d. *Applicant:* Hy Power Energy Company.

e. *Name of Project:* Inglis Lock and Dam Hydro.

f. *Location:* On the Inglis By-Pass Channel in Levy County, Florida.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

Mr. Richard Volkin, P.E., 407 Mystic Avenue-Rear, Unit 25, Medford, MA 02155, (617) 391-5757.

Mr. Robert Karow, 2700 Post Oak Boulevard, Suite 1530, Houston, TX 77056, (713) 626-7800.

i. *FERC Contact:* Ed Lee (tag) (202) 357-0809.

j. *Comment Date:* May 11, 1990.

k. *Description of Project:* The applicant proposes to utilize an existing lock and dam under the jurisdiction of the U.S. Army Corps of Engineers. The proposed project would consist of: (1) 100-foot-long and 25-foot-wide intake channel; (2) a powerhouse containing one 2.2-MW generating unit; (3) a tailrace; (4) a 3-mile-long, 12.5-kV transmission line; and (5) appurtenant facilities. Applicant estimates that the cost of the work to be performed under the terms of the permit would be \$97,000 and that the project average annual energy output would be 7.8 GWh. Energy produced at the project would be sold to a local utility company.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10895-000.

c. *Date Filed:* February 16, 1990.

d. *Applicant:* Michiana Hydro-Electric Power Corporation.

e. *Name of Project:* Mishawaka.

f. *Location:* On the St. Joseph River near the Town of Mishawaka, St. Joseph County, Indiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. John E. Fisher, P.E., Lawson-Fisher Associates, 525 West Washington Street, South Bend, IN 46601, (219) 234-3167.

i. *FERC Contact:* Charles T. Raabe (202) 357-0811.

j. *Comment Date:* May 11, 1990.

k. *Description of Project:* The proposed project would consist of: (1) An existing 327-foot-long timber crib, rockfill and concrete, overflow-type dam having spillway crest elevation 692.0 feet MSL; (2) a reservoir having a 130-acre surface area and a 750-acre-foot storage capacity at normal water surface elevation 694.0 feet MSL; (3) a proposed powerhouse containing a generating unit having a capacity of

1,470-kW operated at a 10.5-foot head; (4) a proposed 1,000-foot-long transmission line; and (5) appurtenant facilities.

Applicant estimates that the cost of the work to be performed under the terms of the permit would be \$34,000. The project estimated average annual generation is 11.0 million kWh. Energy produced at the project would be sold to the Mishawaka Municipal electric system. The dam is currently owned by Uniroyal, Inc.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. *Development Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must

conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be

served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 2, 1990; Washington, DC.
Lois D. Cashell,
Secretary.

[FR Doc. 90-7926 Filed 4-5-90; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP90-1031-000 et al.]

Pacific Gas Transmission Co. et al.; Natural Gas Certificate Filings

March 30, 1990.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas Transmission Co.

[Docket No. CP90-1031-000]

Take notice that on March 23, 1990, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed in Docket No. CP90-1031-000 and application pursuant to section 7(c) of the Natural Gas Act for a blanket certificate of public convenience and necessity, pursuant to § 284.221 of the Commission's Regulations (18 CFR 284.221), authorizing the transportation and delivery of natural gas on behalf of

others in accordance with part 284, subpart G of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

PGT states that it proposes to render firm and interruptible transportation of natural gas on behalf of others under its currently effective Rate Schedule FTS-1 and ITS-1, under which PGT is currently rendering self-implementing transportation under Section 311 of the Natural Gas Policy Act of 1978, modified only to reflect the expanded scope of authorization. PGT further states that it would continue to provide interruptible and firm (to the extent firm capacity becomes available) transportation service to all shippers on a first-come/first-served basis pursuant to the terms of its currently effective tariff, as modified by the proposed tariff sheets.

PGT states that its existing priority of service for interruptible section 311 transportation service has been authorized by the Commission.¹ PGT further states that it proposes to allow shippers receiving section 311 service at the time it accepts the blanket certificate to switch to blanket transportation if they so desire. PGT also requests that the Commission waive the prior notice requirements of § 157.205 of the Commission Regulations (18 CFR 157.205) for those shippers. PGT states that regardless of whether a shipper elects to maintain its Section 311 status or to convert to blanket transportation service, existing shippers would retain their place in PGT's currently effective queue.

Comment date: April 20, 1990 in accordance with Standard Paragraph F at the end of the notice.

¹ 40 FEREC ¶61.193; see 48 FEREC ¶61.125.

2. Natural Gas Pipeline Company of America

[Docket Nos. CP90-1057-000, CP90-1058-000, and CP90-1059-000]

Take notice that on March 28, 1990, Texas Gas Transmission Corporation (Applicant), 701 East 22nd Street, Lombard, Illinois 60148, filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.^{1a}

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

^{1a} These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day ² avg. annual	Points of		Start up date rate schedule	Related ³ dockets
			Receipt	Delivery		
CP90-1057-000 (3-28-90)	Texaco Gas Marketing, Inc.	100,000 20,000 7,300,000	TX, LA, IL, AR, Offshore TX and LA.	IL, AR, TX, Offshore LA and TX.	2-10-90 ITS	ST90-2070-000
CP90-1058-000 (3-28-90)	Texas-Ohio Gas, Inc.....	5,000 2,500 912,000	TX, LA, AR, Offshore LA and TX.	LA, Offshore LA and TX.....	2-01-90 ITS	ST90-1983-000
CP90-1059-000 (3-28-90)	Santa Fe Minerals, Inc.....	100,000 30,000 10,950,000	OK, IA, AR, KA, IL, LA, Offshore TX and LA.	IL, AR, LA, IA, NM, MO, Offshore TX.	2-10-90 ITS	ST90-2211-000

² Quantities are shown in MMBtu unless otherwise indicated.

³ If an ST docket is shown, 120-day transportation service was reported in it.

3. Northern Natural Gas Co.; Division of Enron Corp.

[Docket No. CP90-1033-000]

Take notice that on March 23, 1990, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP90-1033-000 a request pursuant to § 157.205 of the Commission's Regulations for permission and approval to abandon by removal certain pipeline facilities used to serve Peoples Natural Gas Company, Division of Utilicorp, Inc. (Peoples) located in Johnson County, Nebraska under Northern's blanket certificate issued in Docket No. CP82-401-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to abandon by removal approximately 8.23 miles of the 18.67 mile Pawnee City 4-inch "A" branch line and ground appurtenances located in Johnson County, Nebraska and to remove all piping except piping under road crossings which would be water filled and capped. Northern states that this section of line has deteriorated to the point where it needs major repairs that would require Northern to expend funds to conduct extensive repairs and maintenance work. Northern states that it has determined and Peoples has agreed that this segment of line is not needed to serve current or future customers since the existing Pawnee City 6-inch "J" branch line has the capacity to serve all existing customers and that the proposed abandonment of these facilities would not result in the abandonment of service to any of Northern's customers.

Northern proposes to relocate two small measuring stations used to serve two residences located on the portion of the 4-inch line to be abandoned to the existing Pawnee City 6-inch "J" branch line to continue service through these stations. Northern states that the proposed relocation of the two measuring stations would be under the automatic authorization of Section 157.208 of the Commission's Regulations, pursuant to Northern's blanket certificate granted in Docket No. CP82-401-000.

Comment date: May 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

4. El Paso Natural Gas Co.

[Docket No. CP90-1051-000]

Take notice that on March 26, 1990, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas

79978, filed in Docket No. CP90-1051-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to operate an existing delivery point for the sale of natural gas to Southwest Gas Corporation (Southwest) for resale to the Sunbelt Refining Company in Pinal County, Arizona, under El Paso's blanket certificate issued in Docket No. CP82-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to utilize the existing Sunbelt Meter Station for the measurement and delivery of gas to Southwest. It is stated that the facilities were installed in June 1989 under the self-implementing authorization of section 311 of the Natural Gas Policy Act of 1978 in order to provide transportation service for Southwest, also under section 311 authorization. It is stated that no new facilities would be required by the proposal and that the volumes sold to Southwest would be within existing entitlements and within the capacity of the Sunbelt Meter Station.

Comment date: May 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Co.

[Docket No. CP90-1053-000]

Take notice that on March 26, 1989, Williams Natural Gas Company (Williams), Post Office Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP90-1053-000 a request pursuant to §§ 157.205, 157.212 and 284.223 of the Commission's Regulations for authorization to construct and operate certain facilities and to transport natural gas for Conoco, Inc. (Conoco), under Williams' blanket certificates issued in Docket Nos. CP82-479-000 and CP86-631-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams proposes to construct and operate 12.3 miles of 12-inch lateral pipeline, measuring, regulating and appurtenant facilities in order to deliver gas to Conoco, an existing customer, at two additional delivery points in Kay County, Oklahoma. Williams estimates that the proposed facilities would cost \$2,468,000, which cost would be offset by increased transportation revenues as set forth in the transportation agreements.

It is stated that Conoco would use the

gas at its refinery and new cogeneration plant being constructed by Oklahoma Gas & Electric Company (OG&E) on the Conoco plant site in Ponca City, Oklahoma. It is indicated that OG&E proposes to relocate two gas turbine generators from their Enid facility to the Conoco refinery. It is stated that the electrical output from the facility would be part of OG&E's total generation system and would be delivered to OG&E's electrical grid. Williams further states that OG&E would add boilers to the generators to utilize otherwise wasted heat, to produce steam that would be used by Conoco in their refining process.

Williams proposes to transport on a firm basis up to 18,000 dt equivalent of natural gas on a peak day, 18,000 dt equivalent on an average day, and 6,570,000 dt equivalent on an annual basis for Conoco. Williams states that it would perform the transportation service for Conoco under Williams' Rate Schedule FTS. Williams indicates that it would receive the gas at various points in Oklahoma and Texas for delivery to various points on Williams' system in Oklahoma.

Williams further proposes to transport on an interruptible basis up to 18,000 dt equivalent of natural gas on a peak day, 18,000 dt equivalent on an average day, and 6,570,000 dt equivalent on an annual basis for Conoco. Williams states that it would perform the transportation service for Conoco under Williams' Rate Schedule ITS. Williams states that it would receive the gas at various points as listed in the Exhibit to the transportation agreement for delivery to various points on Williams' system in Oklahoma.

Williams indicates that the addition of delivery points is not prohibited by an existing tariff and that the deliveries would be accomplished without detriment or disadvantage to its other customers.

Comment date: May 15, 1990, in accordance with Standard Paragraph G at the end of this notice.

6. National Fuel Gas Supply Corp.;

[Docket No. CP90-989-000]

Take notice that on March 14, 1990, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed an application in Docket No. CP90-989-000, as supplemented March 28, 1990, for a certificate of public convenience and necessity to extend the term of authorizations issued in Docket Nos.

CP90-12-000 and CP88-759-000, *et al.*, as amended, for an additional one year period commencing June 8, 1990, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

National Fuel proposes to extend the term for an additional year from June 8, 1990, the expiration date of the current authorization issued in Docket No. CP90-12-000, of the current authorization issued in Docket No. CP90-12-000, of the interruptible transportation service on behalf of Kane Gas Light and Heat Co., Columbia Gas Transmission Corporation, National Fuel Gas Distribution Corporation (Distribution), Transco Energy Marketing Company, Pine-Roe Natural Gas Company, Highland Land and Minerals, Inc., Elizabethtown Gas Company, and New Jersey Natural Gas Company. No changes in volumes are proposed for any of the shippers.

In addition, National Fuel proposes to extend for an additional one year period the interruptible transportation service on behalf of 498 end user customers of Distribution as currently authorized in Docket No. CP88-759-000, *et al.* It is indicated that certain shippers have requested additional volumes as reflected in Appendix A.*

Also, National Fuel seeks authorization to resume deliveries under its Rate Schedule X-30 on behalf of UGI Corporation (UGI) into the facilities of Transcontinental Gas Pipe Line Corporation, as previously authorized. It is indicated that the Commission's order of July 21, 1988 (44 FERC ¶61,104) had authorized the use of the Wharton, Pennsylvania interconnect as an additional delivery point in the long-term transportation service for UGI for a one-year period ending July 21, 1989. No other changes are proposed.

National Fuel states that it would provide the transportation service through the use of existing facilities. It is stated that National Fuel would continue to charge the rates provided by its Rate Schedule T-1 or, in the case of UGI, the rates provided by its Rate Schedule X-30.

Comment date: April 20, 1990, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North

Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-7933 Filed 4-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-250-003]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

March 30, 1990.

Take notice that Columbia Gas Transmission Corporation (Columbia) on March 27, 1990, tendered for filing the following proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, to be effective April 1, 1990:

Third Revised Sheet No. 26
Third Revised Sheet No. 26A
Third Revised Sheet No. 26B
Third Revised Sheet No. 26C
Third Revised Sheet No. 163

Columbia states that the sales rates set forth on Third Revised Sheet No. 26 reflect an overall decrease of 9.49¢ per Dth in the Commodity rate, and a decrease of \$1.816 per Dth in the Demand rate. In addition, the transportation rates set forth on Third Revised Sheet No. 26C reflect a decrease in the Fuel Charge component of .26¢ per Dth.

The purpose of the revised tariff sheets is to reflect the following:

- (1) A Current Purchased Gas Cost Adjustment Applicable to Sales Rate Schedules;
- (2) A continuation of certain surcharges which were accepted by the Commission to be effective through April 30, 1990;
- (3) A Transportation Fuel Charge Adjustment.
- (4) The elimination of certain demand Account No. 858 reservation costs and commodity Account No. 858 transportation costs previously recovered through the PGA in accordance with prior Commission orders; and
- (5) The removal of storage costs from demand pursuant to the Commission's May 31, 1988 order in Docket Nos. RP88-119-000 and TQ88-1-21-000.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before April 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this

* The appendix can be picked up in the Office of Public Reference, as it will not be published in the Federal Register.

matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-7927 Filed 4-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-250-002]

**Columbia Gas Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

March 30, 1990.

Take notice that on March 27, 1990, Columbia Gas Transmission Corporation (Columbia) filed a motion to place its suspended rates in this proceeding into effect on April 1, 1990, and tendered for filing the revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, listed in Appendix A to the filing. The revised tariff sheets bear an issue date of March 27, 1990, and a proposed effective date of April 1, 1990.

The revised filing is being made in accordance with Ordering Paragraph (B) of the Commission's order issued October 31, 1989, in these proceedings and § 154.67(a) of the Commission's Regulations.

Columbia further requests permission to withdraw certain tariff sheets mooted by the filing of its First Revised Volume No. 1 Tariff pursuant to Order No. 493 and its Order No. 497-A compliance filing, and certain tariff sheets which would change the Account No. 191 surcharge mechanism from a demand and commodity mechanism to a commodity-only surcharge mechanism.

Copies of the filing were served by the company upon each of its wholesale customers, interested state commissions and to each of the parties set forth on the Official Service List in the consolidated proceedings.

Any person desiring to protest should file a protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All protests should be filed on or before April 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-7928 Filed 4-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-250-000 and RP89-249-000]

**Columbia Gas Transmission Corp. and
Columbia Gulf Transmission Co.;
Informal Settlement Conference**

March 30, 1990.

Take notice that an informal conference will be convened in this proceeding on April 11 and April 12, 1990, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 357-8093, or Jennifer B. Corwin at (202) 357-5740.

Lois D. Cashell,

Secretary.

[FR Doc. 90-7931 Filed 4-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-249-001]

**Columbia Gulf Transmission Co.;
Changes in FERC Gas Tariff**

March 30, 1990.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf) on March 27, 1990 tendered for filing revised changes in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2 to become effective April 1, 1990.

Columbia Gulf states that such tariff sheets are necessary to place its rates superseded by Commission Order issued October 31, 1989 in this proceeding into effect at the end of the prescribed suspension period and to consolidate proceedings herein with proceedings in Docket No. RP89-249.

The tariff sheets encompass Columbia Gulf's rate filing herein of September 30, 1989, with adjustments to its cost of service to (1) Eliminate all costs associated with facilities which will not be in service by February 28, 1990; and (2) reflect the level of purchased gas

costs in Columbia Gas Transmission Corporation's (Columbia Transmission) most recent Purchased Gas Cost Adjustment filing in Docket No. TF90-1-21 filed February 27, 1990.

Copies of this filing were served upon all Columbia Gulf's jurisdictional customers interested state commissions and to each of the parties set forth on the Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All such protests should be filed on or before April 6, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-7929 Filed 4-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM90-5-26-000]

**Natural Gas Pipeline Company of
America; changes in FERC Gas Tariff**

March 30, 1990.

Take notice that on March 27, 1990, Natural Gas Pipeline Company of America (Natural) submitted for filing six (6) copies each of the Third Revised Sheet Nos. 171 and 172 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of the revised tariff sheets is April 1, 1990. The purposes of the filing are (1) To track Colorado Interstate Gas Company's (CIG) revised allocation of take-or-pay buyout, buydown and other contract reformation costs; and (2) to reflect accrued interest for the period of May 1989 through March 1990.

Natural requests that the Commission grant any waivers it deems necessary to allow the tariff sheets to become effective April 1, 1990. A copy of the filing was mailed to Natural's jurisdictional sales customers, interested state regulatory agencies, and all parties set out on the official service list in Docket Nos. RP89-131-000, *et al.*

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before April 6, 1990.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-7930 Filed 4-5-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-94-020, RP88-181-012, RP88-266-004, and RP88-257-003]

Sea Robin Pipeline Co.; Filing of Tariff Sheet

March 30, 1990.

Take notice that on March 26, 1990, Sea Robin Pipeline Company tendered for filing the following tariff sheet as part of its FERC Gas Tariff, Original Volume No. 1:

Original Volume No. 1

Effective January 1, 1990

Substitute Original Sheet No. 4-A3

On March 19, 1990, Sea Robin Pipeline Company (Sea Robin) tendered for filing several tariff sheets, including Original Sheet No. 4-A3, that set forth rates in compliance with the Federal Energy Commission's Order issued March 8, 1990 in the above-captioned dockets. Sea Robin states that Original Sheet No. 4-A3 contained several administrative errors pertaining to proper D1 Billing Determinants.

Sea Robin states that it is refiling this particular sheet as Substitute Original Sheet No. 4-A3 in order to correct these errors.

Sea Robin states that copies of this filing were served on all participants in the above-referenced dockets and on any parties required by the Commission's Regulations.

Any person desiring to protest said filing should file a protest with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before April 6, 1990, and in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). Such motion will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-7934 Filed 4-5-90; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3753-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed March 26, 1990 Through March 30, 1990 Pursuant to 40 CFR 1506.9.

EIS No. 900108, FSuppl, SCS, PA, WV, Wheeling Creek Watershed Project, Reevaluation and Additional Flood Protection Measure, Funding, Implementation and section 404 Permit, Ohio and Marshall Counties, WV and Greene and Washington Counties, PA, Due: May 7, 1990, Contact: Rollin Swank (304) 291-4151.

EIS No. 900109, Draft, FHW, WA, WA-509/East-West Corridor Improvements or Relocation, I-705 to East 11th Street and Marine View Drive, Funding, US Coast Guard section 9, and US COE sections 10 and 404 Permits, City of Tacoma, Pierce County, WA, Due: May 21, 1990, Contact: Barry F. Morehead (206) 753-2120.

EIS No. 900110, Draft, AFS, NM, Eagle Peak and Buzzard Timber Sales Management Plan, Implementation, Reserve Ranger District, Gila National Forest, Catron County, NM, Due: May 21, 1990, Contact: Michael Gardner (505) 533-6231.

EIS No. 900111, Draft, NOA, FL, NJ, NY, NH, ME, MA, RI, CT, PA, DE, MD, VA, NC, SC, GA, Atlantic Coast Red Drum Fishery Management Plan, Implementation, Exclusive Economic Zone (EEZ) off the east coast of MA, NH, MA, RI, CT, NY, NJ, PA, DE, MD, VA, NC, SC, GA, and FL, Due: May 21, 1990, Contact: Dr. Andrew J. Kemmerer (813) 893-3141.

EIS No. 900112, Draft, USN, MXG, MS, AL, EMPRESS II (Electromagnetic Pulse Radiation Environment Simulator for Ships) Operation, Gulf of Mexico and Berthing Site Selection, Mobile, AL; Gulfport, MS or

Pascagoula, MS, Due: May 21, 1990, Contact: Lt. James Rose (202) 746-1386.

Amended Notices

EIS No. 890025, Draft, AFS, NH, Loon Mountain Ski Area, South Mountain Expansion Project, Special Use Permit, White Mountain National Forest, Grafton County, NH, Due: April 10, 1989, Contact: Dain Maddox (414) 643-4499. Published FR 2-10-89—Officially Withdrawn by Preparing Agency.

EIS No. 890328, DSuppl, AFS, NH, Loon Mountain Ski Area, South Mountain Expansion Project, Updated Information, Special Use Permit, White Mountain National Forest, Grafton County, NH, Due: January 8, 1990, Contact: Dain Maddox (414) 291-3305. Published FR 11-24-89—Officially Withdrawn by Preparing Agency.

EIS No. 900006, Draft, BLM, NV, Thousand Springs Coal-Fired Power Plant Land Exchange, Construction and Operation, Right-of-way Grant, section 404 Permit, Elko County, NV, Due: April 11, 1990, Contact: Nancy Phelps Dailey (702) 738-4071. Published FR 12-15-89—Review period extended.

Dated: April 3, 1990.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 90-8035 Filed 4-5-90; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3753-1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 19, 1990 through March 23, 1990 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 [54 FR 15006].

Draft EISs

ERP No. DS-AFS-J65102-CO, Rating EC2, San Juan National Forest, Land and Resource Mgmt Plan Amendment, Timber Management Program, Implementation, CO.

Summary: EPA found this document to be deficient in water resource and impacts modelling. Current environmental data should be incorporated into this document. Cumulative impacts are not well documented, especially in the area of water quality.

ERP No. D-AFS-K65123-CA, Rating EC2, Baldy Fire Recovery Project, Implementation, Klamath National Forest, Happy Camp Ranger District, Siskiyou County, CA.

Summary: EPA expressed environmental concerns because of potential adverse impact to water quality posed by timber recovery techniques. EPA encouraged the Forest Service to adopt the alternative with the least impacts to water quality and fisheries. EPA has requested additional policy and mapping information in the final EIS.

ERP No. D-DOE-L08046-WA, Rating EC2, Washington Water Power and British Columbia Hydro 230kV Transmission Interconnection, Construction, Operation and Maintenance, Presidential Permit, Pend Oreille, Spokane, Stevens and Lincoln Counties, WA.

Summary: EPA is concerned with the potential impacts to wetland resources of the proposed alternative. The final EIS must clearly identify wetland resources that will be impacted from the proposed project, and must include mitigation measures for unavoidable impacts.

ERP No. D-FHW-F40307-WI, Rating EO3, US 53 Improvements, Trego to Kent Road, Funding and section 404 Permit, Washburn and Douglas Counties, WI.

Summary: EPA expressed environmental objections to this project and identified the inadequacies of the alternatives analysis. EPA does not believe that significant adverse wetland impacts were adequately assessed, and recommended the preparation of a supplemental draft EIS.

ERP No. D-USA-K85061-HI, Rating LO, Fort DeRussy Armed Forces Recreation Center Development, Construction, Implementation, Oahu Island, County of Honolulu, HI.

Summary: EPA expressed a lack of objection with the proposed action. However, EPA requested that the Army work with the Hawaii Water Pollution Control Agency to implement measures to control nonpoint source water pollution, and to notify EPA should any hazardous or toxic substances be discovered during any phase of the project, pursuant to the Federal Superfund law.

Final EISs

ERP No. F-AFS-J61082-UT, Snowbasin Four Season Destination Resort, Development, Wasatch-Cache National Forest, Weber and Morgan Counties, UT.

Summary: EPA concurs with the information provided in the final EIS, which supports the Record of Decision in that Alternative C can provide the desired balance of providing for a viable destination resort and an enhanced ski area, as well as providing for other resource values at Snowbasin.

ERP No. F-BLM-L61165-OR, Oregon Statewide Wilderness Study Areas, Wilderness Designation, Additional Lands, several.

Summary: Review of the final EIS has been completed and the project found to be satisfactory. No formal letter was sent to the agency.

ERP No. F-CGD-C50010-NY, Davids Island Project, Marina and Residential Development, Bridge and Road Construction, CGD Bridge Permit, COE section 404 Permit, City of Rochelle, Long Island Sound, Westchester County, NY.

Summary: EPA expressed concerns about impacts to the aquatic environment, water quality, and air quality. Accordingly, EPA recommended denial of the Department of the Army permits and requested that the outstanding issues and concerns be addressed prior to issuance of the Record of Decision.

ERP No. F-FHW-F40296-WI, US 45 Bypass Construction around the City of New London, Funding and 404 permit, Outagamie County, WI.

Summary: EPA has no objections to the project as proposed as long as the following commitments are made in the Record of Decision. Monitor water quality and soil conditions at Mud Lake, and apply appropriate erosion control measures during construction.

Regulations

ERP No. R-CGD-A52166-00, 33 CFR part 161; Regulations for Required Participation in Vessel Traffic Service, NY (55 FR 3704).

Summary: Review of the Regulation was not deemed necessary. No formal letter was sent to the agency.

Dated: April 3, 1990

William D. Dickerson,

Deputy Director, Office of Federal Activities.
[FR Doc. 90-8034 Filed 4-5-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket Nos. 90-115- through 90-118]

FM Station Applications

1. The Commission has before it the following mutually exclusive applications for four new FM stations:

Applicant city and state	File No.	MM docket no.
I		
A. D.C. Jones; New Iberia, LA.	BPH-880519NN...	90-118
B. Acadiana Limited Partnership; New Iberia, LA.	BPH-880519OC...	
<i>Issue heading and applicants</i>		
1. Air Hazard, B		
2. Comparative, A, B		
3. Ultimate, A, B		
II		
A. Pistole Broadcasting Co.; Florence, AL.	BHP-870327KF....	90-117
B. Benny Carle Broadcasting, Inc.; Florence, AL.	BHP-870327KH....	
C. Sanctified FM Limited Partnership; Florence, AL.	BHP-870327ME....	
D. Voncile R. Pearce; Florence, AL.	BHP-870330NB....	
E. CCI-FM, Ltd.; Florence, AL.	BHP-870331ME....	
F. Triad Broadcasting Co.; Florence, AL.	BHP-870331OV....	
G. PrimeMedia Broadcasting; Florence, AL.	BHP-870331PJ....	
H. Clarence T. Barinowski; Florence, AL.	BHP-870331PS....	
I. Florence Radio Joint Venture; Florence, AL.	BHP-870415MG....	
J. William Paxton Rogers; Florence, AL.	BHP-870327MK (Dismissed Herein).	
<i>Issue heading and applicants</i>		
1. See Appendix, C		
2. See Appendix, C		
3. See Appendix, C		
4. See Appendix, C		
5. See Appendix, H		
6. 1.65, H		
7. See Appendix, H		
8. Air Hazard, C, E, G, I		
9. Comparative, A-I		
10. Ultimate, A-I		
III		
A. Ghio Broadcasting Co., Inc.; Hamlet, NC.	BPH-880426MA...	90-116

Applicant city and state	File No.	MM docket no.
B. Hamlet Radio Group, Inc.; Hamlet, NC.	BPH-880428MA...	
C. Henry Lovely, Jr.; Hamlet, NC.	BPH-880428MC...	
D. Sherrell Jackson; Hamlet, NC.	BPH-880428ML...	
E. Wingate College, Inc.; Hamlet, NC.	BPH-880428MR...	
F. Walter Sturdivant, Jr.; Hamlet, NC.	BPH-880428MT...	
<i>Issue Heading and Applicant(s)</i>		
1. Financial Qualifications, C		
2. Comparative, A,B,C,D,E,F		
3. Ultimate, A,B,C,D,E,F		
IV		
A. Ammerman Enterprises, Inc.; Bay City, TX.	BPH-880523ME...	90-115
B. North Star Communications, Inc.; Bay City, TX.	BPH-880523MN...	
C. Gardiner Broadcasting Corp.; Bay City, TX.	BPH-880523MU...	
D. Oak Creek Communications, Inc.; Bay City, TX.	BPH-880523MX...	
<i>Issue heading and applicants</i>		
1. Comparative, A, B, C, D		
2. Ultimate A, B, C, D		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M. Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services,

Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division,
Mass Media Bureau.

Appendix—(Florence, Alabama)

Additional Issue Paragraphs

1. To determine whether Sonrise Management Services, Inc., is an undisclosed party to the application of C (Sanctified).
2. To determine whether C's (Sanctified) organizational structure is a sham.
3. To determine whether C (Sanctified) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issues pending.
4. To determine, from the evidence adduced pursuant to Issues 1 through 3 above, whether C (Sanctified) possesses the basic qualifications to be a licensee of the facilities sought herein.
5. To determine, with respect to H (Barinowski), whether, in light of the evidence adduced concerning the deficiencies set forth in the Hearing Designation Order in MM Docket 88-296, the applicant is financially qualified.
6. To determine whether H (Barinowski) violated § 1.65 of the Commission's Rules, and/or lacked candor, by failing to report the designation of character issues against Augusta Radio Fellowship Institute, Inc., of which Barinowski is president, an applicant in the proceeding in Docket 88-296 whose application was dismissed at its request prior to resolution of the character issues.
7. To determine (a) whether, in light of the evidence adduced pursuant to Issue 5 above, Augusta Radio Fellowship Institute, Inc. made misrepresentations to the Commission, was lacking in candor in its dealings with the Commission or attempted to deceive or mislead the Commission, and (b) if issue (a) is resolved in the affirmative, the effect thereof on H's (Barinowski) basic qualifications to be a Commission licensee of the facilities sought herein.

[FR Doc. 90-7925 Filed 4-5-90; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance

with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Revision of 3067-0026.

Title: Application for Community Disaster Loan Cancellation.

Abstract: The Community Disaster Loan Program offers loans to local governments which have suffered a substantial loss of tax or other revenues as a result of a major disaster or emergency and demonstrates a need for Federal financial assistance in order to perform their governmental functions.

Basic Program authorities provide for cancellation of all or part of the loan if revenues of the local government during the 3 full fiscal years following the disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character. Under these conditions, repayment by the local government of all or any part of the Community Disaster Loan will be cancelled. Loan cancellations that would result in duplication of benefits to the applicant will not be made.

Local governments shall use FEMA Form 90-5, Application for Loan Cancellation to request cancellation of Community Disaster Loans.

Type of Respondents: Local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 30 Hours.

Number of Respondents: 5.

Estimated Average Burden Hours Per Response: 6.

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borrer, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7231, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: March 27, 1990.

Wesley C. Moore,
Director, Office of Administrative Supp. 1.

[FR Doc. 90-7993 Filed 4-5-90; 8:45 am]

BILLING CODE 6718-01-M

**Agency Information Collection
Submitted to the Office of
Management and Budget for
Clearance**

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Extension of 3067-0033.

Title: Notice of Interest.

Abstract: Any grantee or subgrantee receiving Federal disaster assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, by Public Law 100-707, is required to submit a Notice of Interest, FEMA Form 90-49, to receive Federal assistance under FEMA's Public Assistance Program. The form is used by grantees to identify property and facilities damaged as a result of a Presidentially declared major disaster or emergency so that inspectors may be appropriately assigned to conduct a formal damage survey. The form is submitted through the Governor's Authorized Representative to the appropriate FEMA Regional Director within 30 days following designation of the area in which the damage is located.

Type of Respondents: State or local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 1,250.

Number of Respondents: 2,500.

Estimated Average Burden Hours Per Response: .5 hours.

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borrer, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7231, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: March 27, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.
[FR Doc. 90-7994 Filed 4-5-90; 8:45 am]

BILLING CODE 6716-01-M

**Agency Information Collection
Submitted to the Office of
Management and Budget for
Clearance**

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Revision of 3067-0077.

Title: Post Construction Elevation Certificate/Floodproofing Certificate.

Abstract: The Elevation Certificate/Floodproofing Certificate is an adjunct to the application for flood insurance and is required for proper rating of post-Flood Insurance Rate Map (FIRM) structures, which are buildings constructed after publication of the FIRM, for flood insurance in Special Flood Hazard Areas. The Elevation Certificate is also needed for pre-FIRM structures being rated under post-FIRM flood insurance rules. The standardized formats of the Elevation Certificate (FEMA Form 81-31) and Floodproofing Certificate (FEMA Form 81-65) provide the community officials and others documents which they may use to readily record needed information.

The forms are completed by a surveyor, other professional, or owner to record essential building information to establish the basis for charging property owners actuarial insurance rates and/or for use by the community.

Type of Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping Burden: 3,008.

Number of Respondents: 15,040.

Estimated Average Burden Hours per Response: 12 minutes.

Frequency of Response: Other—once per building.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borrer, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7231, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: March 27, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.
[FR Doc. 90-7994 Filed 4-5-90; 8:45 am]

BILLING CODE 6716-01-M

**Agency Information Collection
Submitted to the Office of
Management and Budget for
Clearance**

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Revision of 3067-0021.

Title: Claims for National Flood Insurance Program.

Abstract: The National Flood Insurance Program provides low-cost federally subsidized flood insurance for existing buildings exposed to flood risk. The purchase of flood insurance is mandatory when Federal or federally related financial assistance is being provided for acquisition or construction of buildings located or to be located within FEMA-identified special flood hazard areas of communities which are participating in the program. The following forms are necessary for the continued proper performance of FEMA's functions related to indemnifying policyholders for flood damages to their properties: FEMA Form 81-40, Worksheet-Contents-Personal Property; FEMA Form 81-41, Worksheet-Building; FEMA Form 81-41a, Worksheet-Building Continuation Sheet; FEMA Form 81-42, Proof of Loss; FEMA Form 81-43, Notice of Loss; FEMA Form 81-44, Statement as to Full Cost of Repair or Replacement Under the Replacement Cost Coverage, Subject to the Terms and Conditions of This Policy; FEMA Form 81-57, National Flood Insurance Program Preliminary Report; FEMA Form 81-58, National Flood Insurance Program Final Report; FEMA Form 81-59, National Flood Insurance Program Narrative Report; and FEMA Form 81-63, Cause of Loss and Subrogation Report.

Type of Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping Burden: 114,000.

Number of Respondents: 30,000.

Estimated Average Burden Hours Per Response: 3.8.

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borrer, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7231, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: March 27, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90-7991 Filed 4-5-90; 8:45 am]

BILLING CODE 6718-01-M

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35).

Type: Revision of 3067-0034.

Title: Application for Community Disaster Loan.

Abstract: The Community Disaster Loan Program offers loans to local governments which have suffered a substantial loss of tax or other revenues as a result of a major disaster or emergency and demonstrates a need for Federal financial assistance in order to perform their governmental functions. Eligibility is based on the financial condition of the local government and a review of financial information and supporting justification accompanying the Community Disaster Loan application, FEMA Form 90-7.

Type of Respondents: Local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 30 Hours.

Number of Respondents: 5.

Estimated Average Burden Hours Per Response: 6.

Frequency of Response: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Borrer, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this

information collection, including suggestions for reducing this burden, to: the FEMA Clearance Officer at the above address; and to Gary Waxman, (202) 395-7231, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503 within four weeks of this notice.

Dated: March 27, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90-7992 Filed 4-5-90; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-861-DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama (FEMA-861-DR), dated March 21, 1990, and related determinations.

DATED: March 22, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that the incident period for this disaster is closed effective March 28, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-7995 Filed 4-5-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-861-DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama (FEMA-861-DR), dated March 21, 1990, and related determinations.

DATED: March 28, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Alabama, dated March 21, 1990, is hereby amended to include

the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 21, 1990:

The counties of Autauga, Barbour, Bullock, Butler, Chilton, Clarke, Conecuh, Covington, Crenshaw, Dale, Dallas, Elmore, Escambia, Geneva, Henry, Houston, Lowndes, Mobile, Monroe, Montgomery, Pike, Randolph, Washington, and Wilcox for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-7996 Filed 4-5-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-861-DR]

Alabama; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alabama (FEMA-861-DR), dated March 21, 1990, and related determinations.

DATES: March 23, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Alabama, dated March 21, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 21, 1990:

The counties of Autauga, Barbour, Bullock, Butler, Calhoun, Chilton, Clarke, Conecuh, Covington, Crenshaw, Dale, Dallas, Elmore, Escambia, Geneva, Henry, Houston, Lowndes, Mobile, Monroe, Montgomery, Pike, Randolph, Washington, and Wilcox for Individual Assistance.

(Catalogue of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

FR Doc. 90-7997 Filed 4-5-90; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-857-DR]**Georgia; Amendment to Notice of a Major Disaster Declaration**

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA-857-DR), dated February 23, 1990, and related determinations.

DATED: March 28, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Georgia, dated February 23, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 23, 1990:

The counties of Harris, Macon, Meriwether, Muscogee, Pike, Polk, Stewart, Talbot, and Upson for Individual Assistance and Public Assistance; and

The counties of Bibb, Butts, Dooly, Early, Fulton, Heard, Newton, Pulaski, and Wilcox for Individual Assistance only.

The period of incidence for this major disaster is hereby amended to be February 10, 1990, through and including March 30, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-7998 Filed 4-5-90; 8:45 am]

BILLING CODE 6718-02-M

Georgia; Amendment to Notice of a Major Disaster Declaration**[FEMA-857-DR]**

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia (FEMA-857-DR), dated February 23, 1990, and related determinations.

DATED: March 1, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Georgia, dated February 23, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 23, 1990.

The counties of Carroll and Douglas for Public Assistance.
(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,
Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-7999 Filed 4-5-90; 8:45 am]

BILLING CODE 6718-02-M

Anti-Arson Program

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of solicitation for award of cooperative agreement.

Notice of Solicitation is hereby given that the Federal Emergency Management Agency, under the Fire Prevention and Control Act of 1974, will issue a Request for Assistance (RFA) No. EMW-90-S-3334 on or about April 27, 1990, regarding the design and implementation of an anti-arson strategy program. This program is limited to Community-Based Organizations.

The purpose of this assistance is to focus on nationwide efforts to reduce the number of arson related fires that occur every year throughout this country.

Some board objectives of this program are:

- * To encourage neighborhood involvement in reducing arson fires through new and innovative broad spectrum programs.

- * To expand the neighborhood involvement to a community-wide participation in fighting arson.

- * To make information available to other neighborhoods and communities regarding successful programs.

- * To increase the cooperation between neighborhood residents, community groups and public service organizations such as fire, police, building and code departments.

- * To build a comprehensive community anti-arson program.

Applications for assistance must be requested in writing and addressed as follows:

Federal Emergency Management Agency, Office of Acquisition Management, 500 C Street, SW., Room 731, Washington, DC 20472. Attn: Patricia A. English, Assistance Officer

Request for Assistance, No. EMW-90-S-3334

Please include a self-addressed mailing label with the request.

Cooperative Agreements are anticipated to be awarded as a result of this request for assistance. It is anticipated that a minimum of five (5) and a maximum of twenty-five (25) assistance awards will be made. The minimum anticipated funding level of this program is \$5,000.00 based on the criteria that will be outlined in the solicitation package.

Kenneth J. Brzonkala,
Director, Office of Acquisition Management.

[FR Doc. 90-8000 Filed 4-5-90; 8:45 am]

BILLING CODE 6718-01-M

Assistance in Identifying Sources to Perform Erosion Rate Studies

AGENCY: Federal Emergency Management Agency.

ACTION: Sources sought synopsis.

SUMMARY: FEMA is trying to identify interested State agencies and Universities which are capable of performing erosion rate studies.

DATED: March 19, 1990.

FOR FURTHER INFORMATION CONTACT: David MacKendrick, Contract Specialist, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3753.

Notice: The Federal Emergency Management Agency (FEMA) is considering the initiation of erosion rate studies for various shorelines of the United States. The data and information obtained from these studies are required to administer section 1306(c) the National Flood Insurance Act Pub. L. 90-448, 82 Stat. 572, 42 U.S. Code 4001-4172, as amended.

The Housing and Community Development Act of 1987, PL 100-242, 101 stat. 1942, 42 U.S. Code 4013(c), was enacted into law on February 5, 1988. Section 544 of this law (commonly referred to as the Upton/Jones amendment to the National Flood Insurance Act) allows for the payment of flood insurance claims under the National Flood Insurance Program (NFIP) for undamaged structures that are threatened by erosion and subject to imminent collapse. The Upton/Jones amendment also includes a setback provision for property that is the subject of a claim payment. In implementing this amendment, FEMA has established criteria for determining whether a structure is subject to imminent collapse based on the rate of erosion at the site. In addition, the determination of the

setback requirements at a site also requires the use of erosion rate data. FEMA will be required to develop erosion rate data where such data do not exist or is of an unacceptable level of detail and accuracy.

It is contemplated that, in carrying out an erosion rate data study effort, two computer databases will be created. The first database, Historic Shoreline Location Database, will contain historic and current shoreline positions in digital format. The second database, Historic Shoreline Positional Change Database, will be created by running a transect program on the first database and shall contain the spacial and temporal data necessary to compute rates of shoreline erosion.

It is further contemplated that the two databases will be compiled and stored in Geographical Information System (GIS) compatible format. This will serve to ensure accuracy and to increase the versatility and flexibility of the database. The erosion rate data that will be derived from the databases could also be used by State and local governments for shoreline management activities.

Project Objective

The objectives of this project are to create two separate but concomitant databases for documenting historic shoreline locations and positional changes for the nations coastlines, including the Great Lakes. The first database, Historic Shoreline Location Database, will be created by digitizing, combining, and storing the historical and current shorelines. A transect program shall be run on this database that will measure the spatial distances between the historic and current shorelines. Output from the transect program shall be stored in the second database called Historic Shoreline Positional Change Database.

Element 1: Collection and Digitization of Shoreline Data to Create the Historic Shoreline Location Database Historical shoreline positions shall be compiled in a GIS compatible format (e.g. ARC/INFO, ERDAS) in order to maximize the use and versatility of the shoreline data. Following is a set of requirements that shall be followed:

- Shorelines may be digitized from a variety of sources, such as National Oceanographic Service T-sheets (NOS T-Sheets) and Topographical Sheets (TP-Sheets) (for historical shorelines that date from the mid-1800's to about 1970) and aerial photographs (for the more recent and current shorelines).
- A space resection, or other analytical photogrammetric computer program, shall be used so that

shorelines can be digitized directly from airphotos. This program shall have the capability to correct for radial and tilt distortion and scale differences in each photo.

- A total of six to eight or more historical and current shorelines shall be digitized from the study area. At least two of the shorelines shall be digitized from airphotos.
- The shoreline groups should be spaced, temporally, at approximately 25 to 65 year intervals for pre-1945 data, and at finer intervals for post 1945 data.
- Only the Mean High Water line (as opposed to other shoreline datums such as Mean Low Water (MLW) or Mean Sea Level (MSL), or when appropriate, the eroding edge of the bluff line, shall be digitized.

- For any given year, no more than 10% of the shoreline shall be digitized from maps plotted at scales of 1:20,000 or less.

Element 2: Storing and Accessing Historic Shoreline Location Database.

The historic shoreline location database shall be stored on 3 1/2 inch diskettes and should be displayable on an IBM graphics terminal and capable of being plotted on a pen and ink plotter. Each of the historic and current shorelines shall be uniquely identifiable by color, symbol and/or line-dash pattern.

Element 3: Generation of Shoreline Transect Data for Creation of the Historic Shoreline Positional Change Database.

A transect program shall be executed on the Historical Shoreline Location Database described above. The purpose of this program is to generate a database from which to perform simple and complex statistical analyses necessary to determine past, and to forecast future, annual erosion rates for coastal areas. This task shall be performed by digitizing baselines, or spines, in a shoreline parallel orientation. The baseline shall be located seaward from the position of the most seaward shoreline. Transects shall be generated that are perpendicular to the baseline and approximately perpendicular to the average position of the historic and recent shorelines. Transects shall be spaced at 50 meter intervals. Distances between the transect—spine intersection and all transect—shoreline intersections shall be measured, and input in units of feet, into a computer database (i.e. Historic Shoreline Positional Change Database). This database shall contain all of the necessary data needed to compute shoreline erosion rates for all possible combinations of year groups at each transect. These "multiple erosion rates-

per-transect" are required for purposes of statistical analyses.

Element 4: Storing and Accessing the Historic Shoreline Positional Change Database.

The data in the Historic Shoreline Positional Change Database shall be stored on 3 1/2 inch diskettes in ASCII format for each transect and for each shoreline/year digitized. In order to maintain consistency for future updates, the baselines and transects used in this study shall also be stored in 3 1/2 inch diskettes so that they can be accessed in the future when it is anticipated that additional shoreline updates will be added to the database.

Element 5: Documentation.

A report shall be prepared that describes the steps and procedures involved in compiling and preparing the Historic Shoreline Location Database and Historic Shoreline Positional Change Database. Topics to be discussed include:

- A. Equipment (computer hardware and software)
- B. Data sources (maps and airphotos used)
- C. Raw data preparation (techniques used to prepare maps and airphotos prior to digitization)
- D. Data screening and error checking
- E. Transect Generation

Deliverables and Schedule

The Agency/University shall deliver the above described GIS-compatible Historical Shoreline Location Database and the Historic Shoreline Positional Change Database on standard IBM PC compatible 3 1/2 inch diskettes. In addition, the Agency/University shall deliver 3 bound draft and final copies of the report described above. The text of the report shall also be provided on IBM compatible 3 1/2 inch diskettes in a format compatible with Word Perfect 5.0

The purpose of this advertisement is to seek possible sources for conducting erosion rate studies. Please understand that this is not a request for a proposal and that any information you provide will be used for general planning purposes. If interested please respond in writing, summarizing potential interests, past experience and current capabilities in completing studies of this nature. Capability statements, at a minimum, should address the following:

- (1) Computer Capabilities (i.e. ability to digitize maps and airphotos and incorporate into a Geographic Information System (GIS) (e.g. ARC/INFO format).
- (2) Experience in Coastal Geomorphology and Map (T-sheet) Interpretation.

(3) Photogrammetry; Methodologies and Experience (i.e., experience in delineating the Mean High Water line or High Water line on airphotos; experience and methodologies used in digitizing airphotos).

(4) Possession of Raw, or Compiled Data (i.e., do you currently possess coastal maps, NOS T-sheets and/or airphotos in raw or compiled digitized format).

This study endeavor requires multiple disciplines and staff having varying degrees of experience in more than one technical field (i.e. computer cartography, coastal geomorphology and photogrammetry). It is possible therefore, that your section or division may not include all of the required professional or technical personnel needed to complete this task. Therefore, we ask that you, or a member of your staff, review and respond to the sections for which you are qualified and then pass it on to the next division and have them respond to the sections for which they are qualified.

Please keep in mind that this is not a solicitation. The intent of this survey is only to identify, for FEMA, potential state and university sources for such studies. Should FEMA decide to actually initiate an erosion rate studies, a formal announcement will be placed in the *Federal Register*, at which time you may also want to respond.

Any assistance you can provide to us at this time will be greatly appreciated. It is requested that you respond in writing to this inquiry within 30 days of this advertisement. Should you have any questions, please contact David MacKendrick, Contract Specialist, at (202) 646-3753. Please send responses to FEMA, Office of Acquisition Management, 500 C Street, SW., Room 726, Washington, DC 20472, Attn: David MacKendrick.

Robin Green,

Acting Chief, Acquisition Management/
Mitigation Recovery & Support Division.

[FR Doc. 90-8001 Filed 4-5-90; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Port of Oakland and Maryland Port Administration

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10220. Interested parties may

submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the *Federal Register* in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010642-007

Title: Port of Oakland/Stevedoring Services of America Terminal Agreement.

Parties: Port of Oakland (Port), Stevedoring Services of America (SSA).

Synopsis: The Agreement amends the basic agreement by extending its term to April 30, 1990. It also increases SSA's basic compensation for its services in managing, operating and soliciting cargo at the Port's terminal to 10 percent of the gross wharfage and terminal tariff revenues which accrue for users of the assigned premises.

Agreement No: 224-200342

Title: Maryland Port Administration/Terminal Corporation Terminal Lease Agreement.

Parties: Maryland Port Administration (MPA), Terminal Corporation (Lessee).

Synopsis: The Agreement provides for the lease of certain premises and improvements at the North Locust Point and Dundalk Marine Terminals for a term of five years beginning on April 5, 1990 and expiring on March 31, 1995. Lessee shall pay rent at a rate per ton per year based on the tonnage handled.

By Order of the Federal Maritime Commission.

Dated: April 3, 1990.

Joseph C. Polking,
Secretary.

[FR Doc. 90-7961 Filed 4-5-90; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

April 2, 1990.

BACKGROUND: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections

of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATES: Comments must be submitted on or before May 7, 1990.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Stephen M. Lovette, Manager (202-452-3622) or Arleen E. Lustig, Senior Financial Analyst (202/452-2987), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202/452-3822).

Proposal to approve under OMB delegated authority the extension, with revision, of the following reports:

1. Report titles: Consolidated Financial Statement for Bank Holding Companies; Parent Company Only Financial Statements for Bank

Holding Companies; Supplement to Consolidated Financial Statements for Bank Holding Companies
Agency form number: FR Y-9C, FR Y-

9LP, FR Y-9SP, FR Y-9CS.
OMB Docket number: 7100-0128.
Reporters: Bank holding companies.
Annual reporting hours: 172,290.

Report	Number of respondents	Frequency	Average hours per Response
FR Y-9C and Y-9LP For bank holding companies with total consolidated assets of \$150 million or more.	935	Quarterly	30.0
For bank holding companies with consolidated assets of less than \$150 million but which have more than one subsidiary bank.	449	Quarterly	16.5
FR Y-9SP	4,501	Semiannually	3.25
FR Y-9CS	600	Quarterly	0.5

No significant effect on small business is expected.

General description of report: These reports are required by law [12 U.S.C. 1844 (b) and (c)] and are available to the public unless confidential treatment is requested by the respondent and granted by the Federal Reserve. However, the proposed FR Y-9CS and information on risk-based capital data (through year-end 1990), on past-due loans and on leveraged buyouts and related transactions are accorded confidential treatment.

These reports provide: (1) Essential information to assist the Federal Reserve in the formulation of supervisory policies; (2) the source of information for the Federal Reserve's evaluation of the condition and financial health of bank holding companies and (3) information to respond to requests on BHCs from Congress and the public.

2. Report titles: Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies; Combined Financial Statements of Nonbank Subsidiaries of Bank Holding Companies, by type of Nonbank Subsidiary

Agency form number: FR Y-11Q, FR Y-11AS.

OMB Docket number: 7100-0244.

Reporters: Bank holding companies.

Annual reporting hours: 5,256.

Report	Number of respondents	Frequency	Average hours per response
FR Y-11Q	292	Quarterly	3.0
FR Y-11AS	292	Annually	6.0

No significant effect on small businesses is expected.

General description of report: These reports are required by law [12 U.S.C. 1844(c)] and are available to the public unless confidential treatment is requested by the respondent and granted by the Federal Reserve.

As part of the Federal Reserve System's supervisory function, these reports collect financial data on combined nonbank subsidiaries of bank holding companies with total consolidated assets of \$1 billion or more, and on bank holding companies with total consolidated assets of at least \$150 million but less than \$1 billion and that have material nonbanking activities.

Board of Governors of the Federal Reserve System, April 2, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-7966 Filed 4-5-90; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

April 2, 1990.

BACKGROUND: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR § 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following form, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final

approval under OMB delegated authority.

DATES: Comments must be submitted on or before April 20, 1990.

ADDRESSES: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 a.m. and 5:15 p.m., except as provided in § 261.8(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Stephen M. Lovette, Manager (202/452-3622) or Harry E. Moore, Senior Financial Analyst (202/452-3493), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the implementation of the following report:

1. **Report title:** Financial Statements for a Bank Holding Company Subsidiary Engaged in Ineligible Securities Underwriting and Dealing.

Agency form number: FR Y-20.

OMB Docket number: 7100-0248.

Reporters: Bank holding companies.

Annual reporting hours: 300.

Report	Number of respondents	Frequency	Average hours per response
FR Y-20.....	25	Quarterly.....	3
No significant effect on small businesses is expected.			

General description of report: This report is required by law (12 U.S.C. 1844(b) and (c)) and is given confidential treatment. The FR Y-20 is being proposed to facilitate and simplify the submission of information which the Board has required to be submitted in orders approving applications by bank holding companies to engage in ineligible securities underwriting and/or dealing.

The FR Y-20 report includes a balance sheet, income statement, a schedule for securities held for dealing and investment, a statement of changes in stockholders' equity, and several memoranda items. The data for the report will be collected from bank holding companies with subsidiaries authorized to engage in the underwriting of and dealing in securities that are ineligible to be underwritten or dealt in by member banks.

Board of Governors of the Federal Reserve System, April 2, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90-7965 Filed 4-5-90; 8:45 am]

BILLING CODE 6210-01-M

Brookside Associates, Inc., et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 20, 1990.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. **Brookside Associates, Inc.,** New York, New York; First Carolina Investors, Inc., Charlotte, North Carolina; Foundation Lyric, Vaduz, Liechtenstein; Hofin Anstalt, Vaduz, Liechtenstein; Trust Alvant, Vaduz, Liechtenstein; John G. Ogilvie, New York, New York; and Robert G. Wilms, Buffalo, New York; to acquire 15 percent of the voting shares USBANCORP, Inc., Johnstown, Pennsylvania, and thereby indirectly acquire United States National Bank in Johnstown, Johnstown, Pennsylvania; Three Rivers Bank and Trust Company, Pittsburgh, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President), 100 Marietta Street, NW., Atlanta, Georgia 30303:

1. **Arthur Hertz,** Coral Gables, Florida; to acquire an additional 2.0 percent of the voting shares of Terrabank Holding Corporation, Miami, Florida, for a total of 10.21 percent, and thereby indirectly acquire Terrabank National Association, Miami, Florida.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. **Barry Eugene Monaghan,** to acquire up to 24.99 percent of the total voting common stock of Guthrie County Bancshares, Inc., Guthrie Center, Iowa; and thereby indirectly acquire Guthrie County State Bank, Guthrie Center, Iowa.

Board of Governors of the Federal Reserve System, April 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-7967 Filed 4-5-90; 8:45 am]

BILLING CODE 6210-01-M

Chase Manhattan National Corp., et al.; Proposed Acquisitions of Bank and Nonbank Subsidiaries

Chase Manhattan National Corporation ("CMNC"), New York, New York, has applied, pursuant to section 3(a)(3) of the Bank Holding Company Act ("BHC Act") (12 U.S.C. 1842(a)(3))

and § 225.11 of the Board's Regulation Y (12 CFR 225.11), for permission to acquire 100 percent of the outstanding shares of The Chase Manhattan Bank (USA), N.A., Wilmington, Delaware. CMNC also has applied, pursuant to section 4(c)(8) of the BHC Act (12 U.S.C. 1843(c)(8)) and §§ 225.25(b)(1) and 225.25(b)(5) of Regulation Y (12 CFR 225.25(b)(1) and 225.25(b)(5)), to acquire Chase U.S. Consumer Services, Inc., New York, New York, and thereby indirectly acquire Chase Auto Leasing Corporation, Manhasset, New York, Chase Manhattan Financial Center, Inc., Minneapolis, Minnesota, Chase Manhattan Financial Services, Inc., Wilmington, Delaware, Chase Manhattan of Tennessee, Inc., Nashville, Tennessee, and Chase Manhattan of Utah, Salt Lake City, Utah, and engage through these subsidiaries in automobile leasing and lending and mortgage and consumer leading. In addition, CMNC has applied, pursuant to section 4(c)(8) of the BHC Act and § 225.25(b)(1) of Regulation Y, to acquire Chase Home Mortgage Corporation, Tampa, Florida, and thereby engage in mortgage lending and servicing.

CMNC and The Chase Manhattan Corporation

("Corporation"), New York, New York, have applied, pursuant to section 4(c)(8) of the BHC Act and § 225.25(b)(1) of Regulation Y, to acquire a *de novo* deposit-taking branch in Jersey, Channel Islands. CMNC and Corporation state that the branch would engage in the following activities: accepting deposits in dollars and other major currencies from non-United States residents and non-United States citizens in amounts of \$100,000 or more (although up to 10 percent of the total deposits may be in amounts as little as \$50,000); lending the majority of these deposits to CMNC's wholly-owned subsidiaries and possibly other nonbank subsidiaries of Corporation; foreign exchange transactions; and other activities constituting commercial banking outside the United States.

Interested persons may express their views on the question of whether consummation of the proposal can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices. Any request for a hearing on this question must be accompanied by a statement of the reasons why a written presentation

would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than May 7, 1990.

Board of Governors of the Federal Reserve System, April 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-7968 Filed 4-5-90; 8:45 am]

BILLING CODE 6210-01-M

Fifth Third Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The Company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the officer of the Board of Governors not later than April 25, 1990.

A. Federal Reserve Bank of Cleveland (John J. Wixted Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Fifth Third Bancorp*, Cincinnati, Ohio; to engage *de novo* through its subsidiary, Fifth Third Trust Company, National Association, Naples, Florida, in trust activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, April 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-7969 Filed 4-5-90; 8:45 am]

BILLING CODE 6210-10-M

SouthTrust Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than April 25, 1990.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 100 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *SouthTrust Corporation*, Birmingham, Alabama, and *SouthTrust of Florida, Inc.*, St. Petersburg, Florida; to merge with *South Florida Financial*

Corporation, Cape Coral, Florida, and thereby indirectly acquire *Community National Bank*, Cape Coral, Florida.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Manning Financial Services, Inc.*, Manning, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of *The First National Bank of Manning*, Manning, Iowa.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Fidelity Bancorporation, Inc.*, Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of *Fidelity Bank*, Fort Worth, Texas.

Board of Governors of the Federal Reserve System, April 2, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-7970 Filed 4-5-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

[Dkt. 9213]

Illinois Cereal Mills, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a manufacturer and seller of industrial dry corn milling products from acquiring industrial dry corn milling assets in the U.S., or any interest in a U.S. industrial dry corn milling company, for a period of ten (10) years, without prior Commission approval.

DATES: Complaint issued June 30, 1988. Order issued March 12, 1990.¹

FOR FURTHER INFORMATION CONTACT: Joseph Brownman, FTC/S-3302, Washington, DC 20580. (202) 326-2605.

SUPPLEMENTARY INFORMATION: On Wednesday, December 20, 1989, there was published in the *Federal Register*, 54 FR 52068, a proposed consent agreement with analysis in the Matter of *Illinois Cereal Mills, Inc.*, for the purpose

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, DC 20580.

of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18.

Donald S. Clark,
Secretary.

[FR Doc. 90-8007 Filed 4-5-90; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. 8822]

The Magnavox Company; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission's order issued on June 9, 1971 (78 F.T.C. 1183) by setting aside paragraphs I.(H), I.(I), I.(E) and I.(S), and by modifying paragraphs I.(N), I.(P) and I.(T), in certain respects.

DATES: Consent Order issued June 9, 1971. Modifying Order issued March 12, 1990.

FOR FURTHER INFORMATION CONTACT: Joseph Eckhaus, F.T.C./S-2115, Washington, DC 20580. (202) 326-2687.

SUPPLEMENTARY INFORMATION: In the Matter of The Magnavox Company. A portion of the prohibited trade practices and/or corrective actions are changed.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

UNITED STATES OF AMERICA BEFORE
FEDERAL TRADE COMMISSION

Commissioners: Janet D. Steiger, Chairman,
Terry Calvani, Mary L. Azcuenaga,
Andrew J. Strenio, Jr., Deborah K. Owen.

The Magnavox Co., a Corporation; Order Granting in Part and Denying in Part Request To Reopen and Modify Order

The Magnavox Company ("Magnavox"), has filed a "Request to Reopen and Modify Consent Order" ("Request"), pursuant to section 5(b) of the Federal Trade Commission Act, 45 U.S.C. 45(b), and § 2.51 of the Commission's Rules of Practice and Procedure, 16 CFR 2.51. The Request

asks the Commission to reopen the proceeding and modify the consent order issued by the Commission on June 9, 1971, in this matter. 78 F.T.C. 1183. The order was previously modified by the Commission on July 11, 1983. 102 F.T.C. 807. Magnavox asks the Commission to set aside and modify several provisions contained in Paragraph I of the order, each of which imposes restrictions on Magnavox's relationships with its dealers in connection with the distribution and sale of consumer electronics products.¹ In support of its Request, Magnavox argues that the modification is warranted by changed conditions of law and fact, and by the public interest. Magnavox's Request was placed on the public record for thirty days, pursuant to § 2.51(c) of the Commission's Rules. No comments were received. For the reasons discussed below, the Commission has determined that Magnavox has not shown that changed conditions of law or fact require reopening the order but that Magnavox has shown that granting portions of the Request would be in the public interest. The Commission has therefore reopened and modified the order.

I.

The complaint in this case alleged that Magnavox violated section 5 of the Federal Trade Commission Act by fixing the prices at which its retail dealers advertised and sold its consumer electronic products in the United States. 78 F.T.C. at 1185. The complaint listed numerous specific acts and practices allegedly used by Magnavox "[i]n furtherance of [Magnavox's price-fixing] policy," including, for example, threatening to discontinue doing business with dealers suspected of selling Magnavox's products at other than its established retail prices. *Id.* at 1186. The complaint did not allege that the specific acts were themselves unlawful outside the scope of a resale price maintenance scheme. The complaint also charged that Magnavox had engaged in exclusive dealing, full-line forcing and tying practices in connection with the sales and distribution of its consumer electronic products. *Id.* at 1186-87. Magnavox consented to the Commission's order.

Paragraph I of the consent order prohibits Magnavox and its successors²

and assigns from engaging in any of twenty-two specified acts and practices related to vertical price fixing. Magnavox's Request seeks the deletion and/or modification of certain of the prohibitions set forth in Paragraph I of the order. Specifically, Magnavox requests the Commission to delete subparagraphs (H)³ and (I)⁴ of Paragraph I. Magnavox also requests that the Commission add a new provision to the order expressly permitting Magnavox to establish cooperative advertising programs under which Magnavox would pay for certain dealer advertising of Magnavox's consumer electronic products on conditions established by Magnavox. Magnavox also requests the Commission to set aside subparagraph (S)⁵ and delete "terminating" from subparagraph (T),⁶ and add an additional new provision to the order expressly permitting it to announce its resale prices for consumer electronic products in advance and refuse to deal with any dealer who fails to comply. Additionally, Magnavox requests that the Commission remove the order's restrictions on Magnavox's ability to obtain certain information from its dealers by modifying subparagraphs (N)⁷ and (P).⁸ Magnavox would also

Request at 3. When we refer to "Magnavox," we include all Philips brands, including Sylvania, Philco, and Philips.

³ Subparagraph (H) prohibits Magnavox from "[t]hreatening to withhold or withholding earned cooperative advertising credits from dealers for the reason that they advertise its products at retail prices other than established or suggested retail prices." 78 F.T.C. at 1189.

⁴ Subparagraph (I) prohibits Magnavox from "[r]equiring that a dealer not state a combination price for its products and other merchandise as a condition for reimbursement under any cooperative advertising program pursuant to which reimbursement is offered." *Id.*

⁵ Subparagraph (S) prohibits Magnavox from "[t]erminating business relationships with any dealer because the dealer has sold or is selling or is suspected of selling its products at other than its established prices or suggested retail prices." 78 F.T.C. at 1190-91.

⁶ Subparagraph (T), as modified by the Commission in 1983, prohibits Magnavox from "[t]erminating, harassing, threatening, intimidating, coercing or delaying shipments to any dealer because the dealer has sold or is selling its products at other than its established or suggested retail prices." 102 F.T.C. at 808.

⁷ Subparagraph (N) prohibits Magnavox from "[i]nspecting sales and business records of any dealer for the purpose of ascertaining the prices at which, or the customers to whom, such dealer sells its products." 78 F.T.C. at 1190.

⁸ Subparagraph (P) prohibits Magnavox from "[r]equiring * * * dealers to report the identity of other dealers, and the prices at which such other dealers * * * sell its products, or the customers to whom such other dealers sell its products." *Id.* Under the proposed modification, Magnavox would be able to require its dealers to report only the identity of customers to whom such other dealers sell its products.

¹ After filing its Request, Magnavox requested certain alternative relief relating to the announcement of prices and unilateral refusals to deal.

² Currently, North American Philips Corporation distributes all Magnavox, Sylvania, Philco and Philips consumer electronic products through a division named Philips Electronics Company.

like the Commission to add a new provision to the order expressly permitting Magnavox to offer consumer rebates through its dealers. Finally, Magnavox requests that the Commission delete subparagraph (E) ⁹ and add a new provision to the order expressly permitting Magnavox to print its suggested resale prices on tickets, tags or other markings affixed, or to be affixed, to consumer electronic products Magnavox ships to its retail dealers ("preticketing").

In its Request, Magnavox argues that the relief it is seeking is required by changed conditions of law and fact, and by the public interest. Magnavox asserts that the aforementioned provisions contain "non-price restrictions, ancillary restrictions which may have, at most, an incidental effect on resale prices, and restrictions on the unilateral pricing policies of [Magnavox] which do not involve any contract, agreement, understanding, or arrangement with [Magnavox's] dealers." Request at 7. Magnavox believes that under decisions rendered by the Supreme Court and the Commission since entry of the order in 1971, these restrictions prescribed conduct that is no longer *per se* unlawful and must thus be judged under the rule of reason test. Magnavox asserts that the markets for consumer electronic products are highly competitive and are fragmented among numerous competitors, "none of which enjoys anything near a dominant position in any market." Request at 3. Magnavox also asserts that these restrictions hinder its efforts to compete with firms not subject to the order's constraints. Magnavox states that granting its Request would enable Magnavox to become a more effective competitor.

Section 5(b) of the FTC Act, 15 U.S.C. 45(b), provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" require such modification. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. *Louisiana-Pacific Corp.*, Docket No. C-2956, Letter to John C. Hart (June 5, 1986), at 4.

The Commission may also modify an order pursuant to section 5(b) when,

although changed circumstances would not require reopening, the Commission determines that the public interest requires such action. Therefore, § 2.51 of the Commission's Rules or Practice invites respondents in petitions to reopen to show how the public interest warrants the requested modification. In the case of a request for modification based on this latter ground, a petitioner must demonstrate as a threshold matter some affirmative need to modify the order. *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2. If the showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification. *Id.* The Commission will also consider whether the particular modification sought is appropriate to remedy the identified harm.

Whether the request to reopen is based on changed conditions or on public interest considerations, the burden is on the respondent to make the requisite satisfactory showing. The language of section 5(b) plainly anticipates that the petitioner must make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes it clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. ¹⁰ If the Commission determines that the petitioner has made the required showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one given the public interest in the finality of Commission orders. ¹¹

III.

Magnavox has failed to show that the modifications it seeks are required by a change in law. All of the provisions that Magnavox seeks to have set aside or

modified are parts of the order's overall prohibition of resale price maintenance. Nothing in the complaint or order suggests that they were imposed because the prohibited conduct itself, absent resale price maintenance, was *per se* unlawful. Of course, resale price maintenance schemes remain *per se* unlawful. *Continental T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977), which was decided six years after the Commission issued the order in this case, recognized that non-price vertical restraints are not inherently anticompetitive and must thus be judged under the rule of reasons. ¹² The Supreme Court in *Sylvania* replaced the *per se* test for non-price vertical customers restraints outside resale price maintenance with a rule of reason test, by the Court did not change the *per se* rule for non-price vertical restraints that are part of a resale price maintenance scheme. Magnavox has failed to show that any of the conduct in which it wishes to engage has become lawful if part of resale price maintenance. Because these provisions prohibit conduct that is unlawful if engaged in as part of resale price maintenance, and because *Sylvania* did not change the law as to such conduct, Magnavox has failed to show that its request should be granted based upon a change in law.

Magnavox has also failed to show that changed conditions of fact require the Commission to reopen and modify the order. Although Magnavox has presented evidence intended to show that the United States consumer electronic products market today is competitive, the record does not contain any evidence of market structure at the time the Commission issued the order, because the complaint was premised on a *per se* theory of resale price maintenance. Based only upon a description of today's consumer electronic market, Magnavox has not shown that changed conditions of fact make the order unnecessary or harmful to competition, requiring the order to be reopened and modified. Indeed, resale price maintenance would be unlawful today, even if Magnavox had shown that the market had changed from concentrated to unconcentrated since the order was issued.

IV.

Notwithstanding Magnavox's failure to demonstrate changed conditions of

⁹ Subparagraph (E) prohibits Magnavox from "[r]equiring dealers to affix to any of its products . . . price tags bearing its established or suggested retail prices." 78 F.T.C. at 1189.

¹⁰ The Commission may properly decline to reopen an order if a request is "merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979). See also Rule 2.51(b) of the Commission's Rules of Practice and Procedure, which requires affidavits in support of petitions to reopen and modify.

¹¹ See *Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

¹² See *In the Matter of Beltone Electronics Corporation, et al.*, 100 F.T.C. 68 (1982) (illustrating that *Sylvania* has significantly affected the Commission's analysis of non-price vertical restraints).

law or fact, Magnavox has shown that the public interest warrants reopening and modifying the order. The provisions it seeks to have changed prohibit some lawful conduct if engaged in outside of a resale price maintenance scheme, and Magnavox, in most instances, has shown that it is being injured in competing with other firms who are free to and do engage in such things as cooperative advertising, preticketing, and rebates. So long as Magnavox continues to be prohibited by the core provisions of Paragraph I from engaging in resale price maintenance, certain broader prohibitions of that paragraph now impose costs that outweigh their continuing benefit. See generally *Lenox, Inc.*, Order Granting in Part and Denying in Part Request to Reopen and Set Aside Order, 5 Trade Reg. Rep. (CCH) ¶ 22,672 (1989). We discuss each of those provisions below:

The Cooperative Advertising Restrictions

Magnavox has requested two modifications of the order and the addition of a proviso to allow it to offer certain price-restrictive cooperative advertising programs. Specifically, Magnavox asks the Commission to modify the order as follows:

1. Delete Paragraphs I(H) and I(I) of the order;¹³ and
2. Add a new Paragraph IX, which would read:

IX. It is further ordered that nothing in this Order shall be construed to prohibit respondent from offering, establishing or maintaining cooperative advertising programs under which respondent will pay for certain dealer advertising of respondent's consumer electronic products on conditions established by respondent, including conditions as to the prices at which respondent's consumer electronic products are offered in such dealer advertising.

Magnavox contends that its ability to compete is adversely affected by the order's restrictions concerning price-restrictive cooperative advertising programs. Many of Magnavox's competitors currently use such programs with respect to consumer electronic product lines that are directly competitive with the Magnavox, Sylvania, Philips and Philco lines. Request at 79-83, 95-98, 12-03, 107-08 and 112-113. In light of Magnavox's competitors' use of programs that Magnavox cannot offer, Magnavox has made a threshold showing that the order is causing competitive injury.

In 1987, the Commission set aside the order in *The Advertising Checking Bureau, Inc.* 93 F.T.C. 4 (1979), which

prohibited the respondent from auditing cooperative advertising programs that require dealers to advertise at a specified price, or not to advertise at discount prices, as a condition to receiving advertising allowances or credits. In support of its determination to set aside that order, the Commission relied on the Supreme Court's decision in *Sylvania and Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752 (1984), noting, among other things, that those decisions "make it clear that the rule of reason should be applied in determining whether non-price vertical restraints unreasonably restrain competition and violate the antitrust laws. In a vertical setting, the *per se* rule applies only to agreements to fix resale prices that prevent the dealer from making independent pricing decisions. See *Monsanto*, 465 U.S. at 764." *The Advertising Checking Bureau, Inc.*, Slip Opinion, p. 2 (FTC Docket No. C-2947, 1987).¹⁴ The Commission also noted that "[t]he fact that a distributional restraint may have an incidental effect on resale prices is not by itself enough to condemn the practice as *per se* unlawful." *Id.* With respect to price restrictive cooperative advertising programs specifically, the Commission held that such programs "would not by themselves constitute agreements to fix resale prices." *Id.* Moreover, the Commission recognized that price restrictive cooperative advertising programs are in fact "likely to be procompetitive * * * in most cases * * * by * * * channeling the retailer's advertising efforts in directions that the manufacturer believes consumers will find more compelling and beneficial * * * [t]his, in turn, may stimulate dealer promotion and investment and, thus, benefit interbrand competition." *Id.* at 3.¹⁵

In conjunction with the Commission's decision to set aside the order in *The Advertising Checking Bureau, Inc.*, the Commission also announced that it had withdrawn its 1980 policy statement regarding price restrictions in cooperative advertising programs, which had stated the Commission's intention to challenge as *per se* unlawful cooperative advertising programs restricting reimbursement for the advertising of discounts. The Commission announced its new policy as to price restrictions in cooperative advertising programs as follows:

¹⁴ Of course, *Sylvania* did not change the *per se* rule against resale price maintenance, the conduct that the order against Magnavox was designed to end.

¹⁵ The Commission set aside *The Advertising Checking Bureau*, order on public interest grounds.

The Commission now concludes that price restrictions in cooperative advertising programs, standing alone, are not *per se* unlawful. The *per se* rule applies to conduct that is so plainly anticompetitive that it is conclusively presumed to be unreasonable without an elaborate inquiry into competitive effects. Cooperative advertising programs that restrict reimbursement for the advertising of discounts do not appear to fall into this category * * *.

6 Trade Reg. Rep. (CCH) ¶ 39,057

The approach followed by the Commission when it adopted its new cooperative advertising policy and set aside the order in *The Advertising Checking Bureau, Inc.* is equally applicable to Magnavox's request that the Commission set aside Paragraphs I(H) and I(I) of the order. These "fencing-in" provisions prohibit price restrictions that Magnavox might want to impose on its dealers in connection with its cooperative advertising programs. Such restrictions may not necessarily be part of an illegal resale price maintenance scheme. Of course, any cooperative advertising program implemented by Magnavox as part of a resale price maintenance scheme would be *per se* unlawful and would violate the order even if modified as Magnavox requests.¹⁶

Magnavox has further shown that setting aside these provisions is not likely to permit Magnavox to exert market power. The markets for most of the consumer electronic products sold by Magnavox appear to be competitive and fragmented and have numerous competitors, none of which has a controlling market share. Because these industries generally appear competitive, Magnavox's use of price-restrictive cooperative advertising programs, without further agreement on the price or price levels to be charged by retailers, is not likely to restrict interbrand competition or reduce output.¹⁷ Additionally, Magnavox has demonstrated that there have been numerous new entrants into the markets for consumer electronic products since the Commission issued the order in this case. Requests at 49-50. In view of the fragmented market shares and the historical ease of entry, the exercise of market power would seem unlikely, suggesting that the proposed

¹⁶ Moreover, Magnavox would continue to be subject to any duties and obligations arising from the Robinson-Patman Act's requirement that promotional allowances be accorded to competing customers on proportionally equal terms.

¹⁷ See, e.g., *Sylvania*, *supra*, where the Court noted that "[t]he degree of intrabrand competition is wholly independent of the level of interbrand competition confronting the manufacturer." 433 U.S. at 52 n.19.

¹³ See 78 F.T.C. at 1189.

modifications should be considered efficiency enhancing *Teac Corp. of America*, 104 F.T.C. 634, 635-37 (1984). Setting aside the order's restrictions on Magnavox's adoption and implementation of price-restrictive cooperative advertising programs would allow Magnavox to compete more effectively, to the benefit of consumers of Magnavox's consumer electronic products.

In its Request, Magnavox argues that certain remaining order provisions might be construed to prohibit Magnavox from engaging in otherwise lawful price-restrictive cooperative advertising programs, and that setting aside the order's specific restrictions concerning cooperative advertising programs may not afford Magnavox the relief it seeks unless it is expressly stated that nothing in the order prevents Magnavox from engaging in such conduct. Consequently, Magnavox asks the Commission to add to the order a new provision conferring that express assurance. We believe that the requested proviso is neither necessary nor warranted. Beyond subparagraphs (H) and (I), which we agree should be set aside, Magnavox cites subparagraphs (A), (B), (F), (G) and (O) as arguably prohibiting these cooperative advertising programs. However, Paragraphs I(A) and I(B), the order's "core" resale price maintenance prohibitions, speak of fixing resale prices, or establishing plans to fix resale prices. Paragraphs I(F) and I(G) prohibit Magnavox from disseminating mandatory price lists or designating mandatory prices in advertisements or promotional materials. Finally, Paragraph I(O) prohibits efforts to obtain dealers' promises to charge certain prices. The revisions to the advertising guidelines, and the setting aside of Advertising Checking Bureau, make clear that price-restrictive cooperative advertising programs do not in themselves constitute agreements on resale prices. Thus, such an advertising program would not violate Paragraphs I(A), I(B), or I(O) and would not amount to the establishment of mandatory prices in violation of Paragraphs I(F) or I(G). The Commission would therefore not construe the remaining portions of the modified order to prohibit Magnavox from establishing and maintaining a cooperative advertising program that included conditions as to the prices at which Magnavox offered its consumer electronic products, so long as such advertising program were not part of a resale price maintenance scheme. In light of the foregoing, the Commission has determined to deny Magnavox's

request that the Commission add the aforementioned proviso to this order.

The Modification Concerning Magnavox's Ability To Announce Resale Prices And To Refuse To Deal With Those Who Fail To Comply

Magnavox has requested that the order be modified to allow it to announce resale prices and unilaterally refuse to deal with those who fail to comply. Specifically, Magnavox requests:

1. That Paragraph I(S) be set aside, and that the word "terminating" be deleted from Paragraph I(T), and
2. That a new Paragraph X be added, which would read:

X. It is further ordered that nothing in this Order shall be construed to prohibit respondent from announcing its resale prices for consumer electronic products in advance and refusing to deal in any such product with any dealer who fails to resell such product at the announced price.

In *Monsanto* and *Sharp*, the Supreme Court reiterated the resale pricing rights of a manufacturer under *United States v. Colgate & Co.*, 250 U.S. 300, 307 (1919) ("[i]n the absence of any purpose to create * * * a monopoly * * * [a] manufacturer [may] exercise his own independent discretion as to parties with whom he will deal; and, of course, he may announce in advance the circumstances under which he will refuse to sell") and discussed the legality of a manufacturer's refusal to deal with distributors who fail to adhere to the resale prices established by the manufacturer for its products. Specifically, the Court held that "[u]nder *Colgate*, the manufacturer can announce its resale prices in advance and refuse to deal with those who fail to comply. And a Distributor is free to acquiesce in the manufacturer's demand in order to avoid termination." *Monsanto*, 465 U.S. at 761.¹⁹ Four years after its decision in *Monsanto*, the Court reaffirmed the rationale of its *Monsanto* decision in *Sharp* when it held that a manufacturer's agreement with a distributor to terminate a competing distributor to eliminate his price cutting was not unlawful *per se* unless the retained distributor also agreed with the

¹⁹ The Court in *Monsanto* also recognized the procompetitive reasons why a manufacturer may wish to exercise its right to announce its resale prices and refuse to sell to dealers who do not comply, when it stated that "[t]he manufacturer often will want to ensure that its distributors earn sufficient profit to pay for programs such as hiring and training additional salesmen or demonstrating the technical features of the products, and will want to see that 'free riders' do not interfere * * *." 465 U.S. at 762-63.

manufacturer to set its prices at some level. 108 S. Ct. at 1518, 1521.¹⁹

Subparagraph (S) and the word "terminating" in subparagraph (T) prohibit Magnavox from exercising the unilateral right it would have under *Monsanto* to announce its resale prices in advance and refuse to deal with those who fail to comply. Magnavox has shown, however, that since the Court's decision in *Monsanto*, many of its competitors have adopted and implemented resale pricing policies that are consistent with the Court's decision in *Monsanto*. See, e.g., Request at 51-52, 85-89, 95-96, 102-03, 107 and 113-14. Additionally, Magnavox has shown that its inability freely to adopt similar lawful resale pricing policies impedes its ability to correct distributional problems and adopt efficiency-maximizing distributional arrangements that would intensify interbrand competition. For example, unlike its competitors, Magnavox cannot refuse to deal with discounting retailers (without the risk of being accused of violating the order and, consequently, the risk of a civil penalty suit and judgment) and thus support its full-service dealers who dedicate substantial resources to educating potential consumers about the features of Magnavox's products but who then often lose the ultimate sale to "free-riding" retailers who offer the same products at a discounted price. This restriction has caused Magnavox to lose the services of a number of full-service dealers who discontinued the line because of Magnavox's "failure to prevent competing retailers who provide little or no service in their stores from selling Magnavox products at deeply discounted prices." Request at 96. See also Request at 102, 107-08 and 113-14.

It is now appropriate to set aside these restrictions.²⁰ This modification will allow Magnavox to announce its resale prices for consumer electronic products in advance and refuse to deal with any dealer who fails to comply. It should therefore enable Magnavox to

¹⁹ In *Sharp*, the Court again recognized that a manufacturer may have legitimate reasons for exercising its right under *Monsanto* to refuse to sell its products to distributors who fail to adhere to the manufacturer's suggested resale prices. Specifically, the Court noted that "manufacturers are often motivated by a legitimate desire to have dealers provide services, combined with the reality that price cutting is frequently made possible by 'free riding' on the services provided by other dealers." *Id.* at 1523.

²⁰ The remaining part of subparagraph (T) will continue to prohibit Magnavox from harassing, threatening, or coercing its dealers (all actions which still may lead to agreements and which therefore remain unlawful).

protect its full-service dealers from the activities of "free-riding" dealers and encourage its full-service dealers to provide the promotion and sales-related services that it believes are necessary to market Magnavox consumer electronic products efficiently. This modification retains all the order's provisions that prohibit Magnavox from engaging in resale price maintenance. The Commission may invoke them if Magnavox engages in conduct that goes beyond what is lawful under *Monsanto*. Having set aside subparagraph (S) and "terminating" from subparagraph (T), the Commission would not construe the remaining portions of the modified order²¹ as prohibiting Magnavox from announcing its resale prices for consumer electronic products in advance and refusing to deal in any such product with any dealer who fails to comply, so long as such conduct is not part of a resale price maintenance scheme. Therefore, Magnavox's requested proviso is unnecessary.

The Modifications Concerning Magnavox's Ability To Obtain Certain Information From Its Dealers

Paragraph I(N) of the order prohibits Magnavox from inspecting the records of any of its dealers for the purpose of ascertaining the prices at which, or the customers to whom, such dealer sells its products. 78 F.T.C. at 1190. Consequently, Magnavox may not even request any dealer to permit such inspection. Paragraph I(P) prohibits Magnavox from requiring dealers to report the identity of other dealers, the prices at which such other dealers sell its products, or the customers to whom such other dealers sell Magnavox's products. *Id.* Therefore, Magnavox has requested that the Commission,

1. Modify Paragraph I(N) of the order by adding the words underlined below and deleting the words in brackets below, as follows:

N. [Inspecting sales and business records of any dealer] Requiring any dealer to permit respondent to inspect the dealer's sales and business records for the purpose of ascertaining the prices at which [, or the customers to

whom,] such dealer sells its products; provided, however, that nothing in this Order shall be deemed to prevent respondent from inspecting such records where such inspection is authorized by law, or for the purpose of assisting respondent to establish its compliance with the provisions of the order issued on December 23, 1964 in Consent Order No. C-869, or with any other obligation or requirement of any government authority.

2. Modify Paragraph I(P) deleting the words in brackets below, as follows:

P. Requiring, soliciting or encouraging dealers to report the identity of other dealers, and the prices at which such other dealers advertise, offer for sale or sell its products [, or the customers to whom such other dealers sell its products].

The proposed modifications would allow Magnavox to request information from its dealers as to the prices at which they sell Magnavox's products.²² Additionally, Magnavox would no longer be prohibited from requesting or requiring any dealer to provide information as to the customers to whom that dealer or any other dealer sells Magnavox's products, or from inspecting any such information provided.²³

Magnavox has failed to meet its burden of demonstrating that the order should be modified with respect to inspection of dealer price data. Although the Supreme Court's decisions in *Monsanto* and *Sharp* suggest that legitimate reasons may exist for a manufacturer and a distributor to exchange price information,²⁴ Magnavox has presented no factual basis for finding that this aspect of the order should be amended. Magnavox asserts that it is placed at a competitive disadvantage by the inability to inspect dealer price records, but it does not allege that any competitor employs this

practice.²⁵ Magnavox states that access to dealers' price records would assist it "to maintain an efficient distribution system." Request at 53, but Magnavox provides no elaboration. This is not a particularized showing of harm from the existing consent order, and it does not satisfy Magnavox's burden of demonstrating why modification of the order would serve the public interest. There are strong public interest considerations in finality of consent orders, and Magnavox has failed to present any facts demonstrating that this requested modification would be appropriate. Accordingly, the Commission has determined to deny Magnavox's request to modify the portions of Paragraph I(N) relating to the inspection of its dealer's pricing records.

The requested modifications regarding identification of customers appear consistent with the Commission's determination in 1983 to delete the order's transshipment provisions. Presumably, Magnavox would like to be able to require or request its dealers to identify the customers to whom they or other dealers sell its products so that it could enforce any transshipment restrictions imposed on its dealers. Consequently, not affording Magnavox the relief it seeks concerning the customer information restrictions could impede Magnavox from making any such transshipment restrictions effective²⁶ and would thus be inconsistent with the previous modification of the order.²⁷ Additionally, as discussed earlier, Magnavox has shown that granting these modifications is not likely to result in Magnavox engaging in unlawful conduct.

The Modification Concerning Consumer Rebates

Magnavox would also like to be able to institute consumer rebate programs,

²² In contrast, in areas where Magnavox has demonstrated competitive disadvantage, it has presented a factual showing as to its competitors' practices.

²⁶ In support of the deletion of the transshipment provisions, the Commission pointed out that those provisions were "adopted as 'fencing-in' restraints ancillary to the order's ban on resale price maintenance" and that "particularly in view of the continued existence of the order's underlying prohibitions against [resale price maintenance], there no longer appears to be a need to continue the transshipment provisions of the order." 102 F.T.C. at 807-08.

²⁷ See also *Lenox*, supra. [Commission deleted certain provisions from the order because they were inconsistent with a previous order modification]; and *Dahlberg Electronics, Inc.*, 101 F.T.C. 703 (1983). [Commission deleted order provision prohibiting respondent from requiring or coercing its dealers to submit to respondent the names of any customers of such dealers].

²¹ Magnavox has also cited Paragraphs I(B) and I(F), in addition to I(S) and I(T) discussed previously, as arguably prohibiting the unilateral conduct in which Magnavox seeks to engage. Those two provisions, however, prohibit fixing resale prices, and publishing mandatory prices, and the Commission will not read them as prohibiting a mere announcement of resale prices. Because the dealer would remain free to follow that announced price or not (and subject itself to the risk of being terminated), the announced price would not be mandatory. Paragraph I(F) would continue to prohibit Magnavox from requiring its dealer to charge the published resale prices.

²² Magnavox, however, would continue to be prohibited from requiring any dealer to provide such information. Magnavox states that it "has no desire to impose such a requirement on its dealers." Request at 33.

²³ Magnavox does not seek modification of the provision of paragraph I(P), which prohibits it from requiring dealers to provide information concerning the prices at which other dealers sell Magnavox's products.

²⁴ In *Monsanto*, the Court recognized that a manufacturer and its distributors have "legitimate reasons to exchange information about the prices and the reception of their products in the market." 465 U.S. at 762. Likewise, in *Sharp*, the Court noted that in *Monsanto* it had "eschewed adoption of an evidentiary standard that '... would create an irrational dislocation of the market' by preventing legitimate communication between a manufacturer and its distributors." 108 S. Ct. at 1520.

under which it would offer rebates to consumers who purchase its consumer electronic products from a Magnavox dealer. The rebates would be paid by Magnavox as credits issued to its dealers on the condition that the dealers apply the amounts to reduce the prices to consumers for the purchased products. Magnavox believes that certain order provisions may be construed to prohibit Magnavox from offering consumer rebates through its dealers.²⁸ To eliminate the risk that any Magnavox consumer rebate program might be deemed to violate the order, Magnavox asks the Commission to add the following new paragraph to the order, which would expressly permit Magnavox to offer such programs:

XI. It is further ordered that nothing in this Order shall be construed to prohibit respondent from offering, establishing or maintaining any consumer rebate program under which respondent will pay a rebate to consumers who purchase one or more of respondents consumer electronic products from a dealer, regardless of whether said rebate is paid by respondent directly to the consumer or is paid by respondent to the dealer on the condition that the dealer apply the amount of the rebate to reduce the dealer's price to the consumer for the product(s) purchased.

Magnavox has demonstrated that many of its competitors in the consumer electronic products market have offered consumer rebates, which are popular among consumers, through their respective dealers. Additionally, Magnavox has demonstrated that it is at a significant competitive disadvantage because it has not been able to offer such programs, given the risk that they might be deemed to constitute violations of the order.

In *Armstrong Cork Company*, 104 F.T.C. 540 (1984), the Commission modified an order so that it could not be read to prohibit the kind of consumer rebate programs Magnavox would like to offer its dealers. In granting the modification requested by Armstrong, the Commission stated:

Armstrong states that it views the presence of the term "rebates" in that paragraph as prohibiting it from funneling "direct-to-consumer" rebates through wholesalers and

retailers. Armstrong has demonstrated that permitting it to offer rebates in this manner will benefit both Armstrong and consumers. And, permitting Armstrong to funnel "direct-to-consumer" rebates through wholesalers and retailers should not affect [their] ability to independently determine the resale price of the product. Moreover, if Armstrong should use the rebates to engage in [resale price maintenance], it would violate the order provisions prohibiting resale price fixing. Thus, because [this modification] should benefit both Armstrong and consumers without permitting [resale price maintenance], granting [the modification] is in the public interest.

Id. at 541.

The original provision in the *Armstrong* order had prohibited:

Enforcing, or attempting to enforce, the price or prices or suggested prices, discounts, rebates or terms or conditions for the resale of Armstrong floor covering products.

68 F.T.C. 849, 854 (1965). The Commission, in 1984, deleted "rebates or terms or conditions" from that provision, leaving the prohibition against,

Enforcing, or attempting to enforce the price or prices or suggested prices or discounts for the resale of Armstrong floor covering products.

104 F.T.C. at 542-43. The Commission has thus interpreted the *Armstrong* order, as it now reads, to allow consumer rebate programs. Comparing the revised *Armstrong* provision to Paragraph I(J) of the *Magnavox* order, it seems clear that direct-to-consumer rebates should not be viewed as prohibited in this order either. Similarly, Paragraph I(K) also does not appear to prohibit such consumer rebates. Therefore, the Commission has determined to deny Magnavox's request for the aforementioned proviso. The Commission however, would not construe the order as prohibiting Magnavox from offering consumer rebates (whether paid by Magnavox directly to consumers or dealers), so long as such programs were not part of a resale price maintenance scheme.

The Modification Concerning "Preticketing"

Magnavox's last request concerns its desire to engage in a practice commonly known as "preticketing"—printing its suggested retail prices on tickets, tags or other markings affixed to consumer electronic products that Magnavox ships to its dealers. Magnavox believes that paragraph I(E) of the order, which prohibits Magnavox from requiring its dealers to attach to any of its products price tags bearing its established or suggested retail prices, precludes preticketing. 78 F.T.C. at 1189. Accordingly, Magnavox asks the

Commission to delete paragraph I(E)²⁹ and add a new paragraph XII, which would read:

XII. It is further ordered that nothing in this Order shall be construed to prohibit respondent from engaging in "preticketing," i.e., suggesting resale prices on any tag, ticket or other marking affixed or to be affixed to any product sold to a reseller.

Setting aside paragraph I(E) is consistent with the Supreme Court's holding in *Monsanto* that "the manufacturer can announce its resale prices in advance and refuse to deal with those who fail to comply." 465 U.S. at 761. The Commission has also recognized that preticketing is one way in which a manufacturer announces its resale price in advance and that the practice is not in itself unlawful. See *Interco Incorporated*, Trade Reg. Rep. (CCH) Transfer Binder ¶ 22,512 (1988) (order setting aside a ban on preticketing because, among other things, "[r]espondents have shown that the ban on preticketing prohibits them from marketing their products in a manner that is available to their competitors and that would otherwise be lawful." *Id.*, slip op. at 6.).

As discussed earlier, given the consumer electronic products market structure, and Magnavox's relative position, Magnavox's preticketing practices are unlikely to be unreasonable. Magnavox has demonstrated that the ban on preticketing places it at a competitive disadvantage with respect to its competitors who are not subject to similar provisions. Request at 54-55, 117-118. Consequently, the affirmative need to modify the order to eliminate the competitive disadvantage outweighs any continuing need for the prohibition on preticketing.³⁰

The Commission has determined to deny Magnavox's request to add to the order the aforementioned preticketing provision. Magnavox suggests that the provision is needed because Paragraph

²⁹ The prohibitions in Paragraphs I(A), I(B), I(F), I(G) and I(J) against suggesting retail prices expired by their terms in 1973.

³⁰ In *Interco*, the Commission, in support of its decision to set aside a ban on preticketing contained in a 1978 order, noted, among other things, that "[t]he ban on preticketing is in the nature of a 'fencing-in' provision to prevent respondents from using otherwise lawful preticketing as a device to accomplish vertical price fixing. The Commission believes that the conduct that led to the entry of this order has been interrupted for a sufficient period of time so that the ban on preticketing is no longer necessary either to dissipate the effects of respondents' past conduct or to prevent its recurrence." *Id.* The *Magnavox* order has been in effect since 1971—seven years longer than the order in *Interco*.

²⁸ See, e.g., paragraph I(J) which prohibits Magnavox from "[e]ngaging in any retail sales of its products through its dealers in which it establishes . . . the retail prices or discounts therefrom and at the same time either (i) fixes the time and/or duration of such sale, or (ii) proscribes the products to be offered." 78 F.T.C. at 1189-90. See also paragraph I(K) which prohibits Magnavox from "[e]stablishing any criteria as to the type of merchandise eligible for or fixing or suggesting the amount of an allowance which dealers may grant on merchandise traded in on the purchase of [Magnavox's] products." *Id.* at 1190.

I(O), which prohibits securing or attempting to secure dealers' promises on retail prices, would still prohibit preticketing. While Paragraph I(O) generally prohibits efforts to obtain dealers' agreements to maintain resale prices, the Commission does not construe Paragraph I(O) and the remaining portions of the order, as modified, as prohibiting Magnavox from engaging in "preticketing," so long as such conduct is not part of a resale price maintenance scheme.

V.

In sum, the Commission has determined that Magnavox generally has made a satisfactory showing that reopening the order and modifying the non-price vertical restraints provisions discussed above is in the public interest. With the exception of the portion of its Request relating to inspection of its dealers' price records, Magnavox has adequately demonstrated that the modifications it seeks would enable Magnavox to use what it considers the most efficient and cost effective distribution of its consumer electronic products and put Magnavox on an equal basis with its competitors. It would also retain the prohibitions against resale price maintenance. Magnavox's conduct would of course also continue to be subject to a case-by-case, rule of reason analysis under the antitrust laws. In light of the Commission's interpretations of the remainder of the order, Magnavox's requested provisos are unnecessary.

Accordingly, *It is ordered* that this matter be reopened and that the Commission's modified order in Docket No. 8822, be, and it hereby is, modified, as of the date of service of this order, by setting aside Paragraphs I(H), I(I), I(E) and I(S), and by modifying Paragraphs I(N), I(P) and I(T), respectfully, as follows:

N. Inspecting sales and business records of any dealer for the purpose of ascertaining the prices at which such dealer sells its products; provided, however, that nothing in this Order shall be deemed to prevent respondent from inspecting such records where such inspection is authorized by law, or for the purpose of assisting respondent to establish its compliance with the provisions of the order issued on December 23, 1964 in Consent Order No. C-869, or with any other obligation or requirement of any government authority.

P. Requiring, soliciting or encouraging dealers to report the identity of other dealers, and the prices at which such other dealers advertise, offer for sale or sell its products.

T. Harassing, threatening, intimidating, coercing or delaying shipments to any dealer because the dealer has sold or is selling its products at other than its established or suggested retail prices.

By the Commission, Commissioner Strenio not participating.

Donald S. Clark,

Secretary.

[FR Doc. 90-8008 Filed 4-5-90; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

General Services Administration Order and Plan; GSA Metric Program

AGENCY: Office of Acquisition Policy,
GSA.

ACTION: Notice.

SUMMARY: This notice provides (1) an order that establishes policies and assigns responsibilities for implementing the metric system of measurement within the General Services Administration, and (2) a metric transition plan that describes a comprehensive and integrated program to comply with the GSA order and the law. The Omnibus Trade and Competitiveness Act of 1988, which amended the Metric Conversion Act of 1975, requires that each agency of the Federal Government establish guidelines and plans to carry out the policy set forth in the law. The order and the plan will meet those requirements within the General Services Administration.

DATES: Comments or suggestions may be submitted in writing on or before May 21, 1990.

ADDRESSES: Comments or suggestions should be addressed to the GSA Metric Steering Group, Office of Acquisition Policy (V), 18th and F Streets, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Rizzi, GSA Office of Acquisition Policy, (202) 566-1043.

SUPPLEMENTARY INFORMATION:

A. Background

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce. The law requires Federal agencies to use the metric system in procurements, grants, and other business-related activities by a date certain and to the extent economically feasible by the end of fiscal year 1992. The law also requires Federal agencies to establish guidelines and plans to implement fully the metric system of measurement.

B. Purpose

The purpose of this notice is to inform the public (particularly commercial firms doing business with GSA), and other government entities of GSA's intent to use the metric system of measurement in its procurements, grants, and other business-related activities to the extent feasible by the end of fiscal year 1992. GSA's commitment stems from the fact that the United States is the only industrially developed nation in the world that has not converted, or taken steps to convert, to the metric system. In connection with this fact, Congress found, in section 5164 of Public Law 100-418, that:

- World trade is increasingly geared towards the metric system of measurement.

- Industry in the United States is often at a competitive disadvantage when dealing in international markets because of its nonstandard measurement system, and is sometimes excluded when it is unable to deliver goods which are measured in metric terms.

- The inherent simplicity of the metric system of measurement and standardization of weights and measures has led to major cost savings in certain industries which have converted to that system.

- The Federal Government has a responsibility to develop procedures and techniques to assist industry, especially small business, as it voluntarily converts to the metric system of measurement.

- The metric system of measurement can provide substantial advantages to the Federal Government in its own operations.

As the Federal Government's business manager, GSA recognizes the importance of U.S. industries' need to convert to the metric system, particularly for export purposes. The need becomes even more important as EC 92 approaches, i.e., the goal of the European Community to form a single, common market by 1992, in which the metric system will be the standard measurement system.

The GSA order and metric transition plan, although internal agency documents, are published with this notice in order to give the public, commercial firms doing business with GSA, and other government entities, maximum opportunity to become aware of what GSA is doing with the metric system, why, and how GSA plans to do it. Although the purpose of this notice is not to solicit comments regarding the documents, GSA will consider positive suggestions or information that may

facilitate implementation of section 5164 of Public Law 100-418 by GSA and firms doing business with GSA.

GSA recommends particularly that commercial firms doing business with GSA become familiar with the law, GSA Order ADM 8000.1A, and the GSA Metric Transition Plan, and actively pursue use of the metric system in their product and service lines and in their other business-related activities.

C. Executive Order 12291

The order and plan are exempt from the requirements of E.O. 12291 because they relate to agency organization and management (§ 1.(a)(3)).

D. Regulatory Flexibility Act

These actions are exempt from the analysis requirements of the Regulatory Flexibility Act because notice and opportunity for comment are not required for these policy statements by section 553 of the Administrative Procedure Act or any other law. Therefore, no initial or final regulatory flexibility analysis will be prepared.

E. Paperwork Reduction Act

The order and plan do not contain a collection of information for purposes of the Paperwork Reduction Act.

For the reasons set out in the preamble, GSA Order ADM 8000.1A and the GSA Metric Transition Plan are published as follows:

Authority: 40 U.S.C. 486(c).

Dated: March 30, 1990.

Richard H. Hopf III,

Associate Administrator for Acquisition Policy.

ADM 8000.1A

February 12, 1990.

GSA Order

Subject: GSA Metric Program

1. *Purpose.* This order establishes policies and assigns responsibilities for implementing the metric system of measurement within the General Services Administration.

2. *Cancellation.* ADM 8000.1 is canceled.

3. *Background.*

a. The Metric Conversion Act of 1975 (Pub. L. 94-168) stated that the policy of the United States shall be to coordinate and plan the increasing use of the metric system in the United States.

b. On August 23, 1988, the President signed the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418, section 5164), which amended the Metric Conversion Act of 1975 to declare:

(1) That the metric system of measurement is the preferred system of weights and measures for United States trade and commerce;

(2) That each Federal agency, by a date certain and to the extent economically feasible by the end of fiscal year 1992, use the metric system of measurement in its

procurements, grants and other business-related activities (unless metric usage is impractical or would have an adverse impact on the market share of U.S. firms); and

(3) That agencies seek out ways to increase understanding of the metric system of measurement through educational information and guidance in Government publications.

4. *Applicability.* This order applies to all Central Office services and staff offices and regional offices.

5. *Definitions.*

a. *Metritication.* Any act that increases the use of the metric system, including metric training and initiation or conversion of measurement-sensitive processes and systems to the metric system.

b. *Metric system.* The International System of Units (Le Systeme International d'Unites (SI)) of the International Bureau of Weights and Measures. The units are listed in Federal Standard 376A, Preferred Metric Units for General Use by the Federal Government.

c. *Hard metric.* The use of metric (SI) measurements only in specifications, standards, supplies, and services.

d. *Soft metric.* The result of mathematical conversion of inch-pound measurements to metric equivalents in specifications, standards, supplies, and services. The physical dimensions are not changed.

e. *Dual systems.* The use of both inch-pound and metric systems. For example, an item is designed, produced, and described in inch-pound values with soft metric values also shown for information or comparison purposes.

f. *Hybrid systems.* The use of both inch-pound and hard metric values in specifications, standards, supplies, and services; e.g., an engine with internal parts in metric dimensions and external fittings or attachments in inch-pound dimensions.

6. *Policies.*

a. GSA will implement the metric system in a manner and on a schedule consistent with Public Law 100-418.

b. GSA will support Federal transition and national conversion to the metric system through participation on the Interagency Committee on Metric Policy and on Government/industry subcommittees, working panels, and groups.

c. Central Office services and staff offices and regional offices will use the metric system in procurements, grants, and other business-related activities consistent with security, operational, economic, technical, logistical, training, and safety requirements.

d. GSA will encourage industry in the change to the metric system by acquiring commercially available metric products and services that meet the functional requirements of GSA and its customers, so long as competition is maintained.

e. Specifications and standards for Federal or GSA procurement will be developed in metric when metric is the accepted industry system. Commercially developed metric specifications and internationally or domestically developed voluntary standards using metric will be adopted whenever possible. When metric is not the accepted industry system, soft metric, hybrid, or dual systems may be used during transition. As

soon as practical, soft, dual, and hybrid English/metric measurements will be replaced with hard metric measurements.

f. Existing specifications and standards in inch-pound units need not be converted, unless conversion is necessary or advantageous.

g. The measurement units in which a system is originally designed may be retained for the life of that system, unless conversion is necessary or advantageous.

h. Bulk (loose, unpackaged) materials normally will be specified and accepted in metric units. Measuring devices and shop and laboratory equipment should be procured in metric or dual units when possible.

i. Metric conversion costs will be handled in GSA as normal operating expenses rather than as special one-time costs. However, these costs are to be identified to the extent practicable. This includes the cost of metric aids, tools, equipment, and training. Significant cost savings resulting from metric conversion also should be identified to the extent practical.

j. GSA will establish training plans and practices that increase employee awareness and understanding of metric system conversion.

7. *Interagency coordination.* Interagency coordination of metritication activity within the United States is the function of the following organizations:

a. *Interagency Committee on Metric Policy (ICMP).* The ICMP provides for high-level coordination of metric policy between Federal agencies. The Associate Administrator for Acquisition Policy (V) represents GSA on this committee.

b. *ICMP Metritication Operating Committee (MOC).* The MOC coordinates appropriate interagency metritication activities and is composed of Federal agency metric coordinators. The MOC undertakes tasks assigned by the ICMP.

c. *MOC Functional Area Subcommittees.* Subcommittees are formed by the MOC to coordinate in specific functional areas and to keep agency officials informed of metric progress being made by industry in those functional areas as it affects Federal activities. MOC subcommittees exist in such functional areas as construction, procurement and supply, transportation, and consumer affairs. GSA is represented on the subcommittees by individuals from the services and staff offices having direct interest in their activities.

8. *Coordination with the private sector.* Because the private sector has an essential role in the transition to the use of metric measurements, its needs and capabilities must be considered along with those of the Federal Government. The U.S. Metric Association (USMA) and the American National Metric Council (ANMC) traditionally have been regarded as the principal representatives of private sector metric interests, plans, and conversion actions. Federal agencies, including GSA, work closely with the USMA and ANMC to aid in exchanging ideas, plans, and methods needed to fulfill the intent of Public Law 100-418. Coordination with other private sector

organizations involved in metrication activities also may be beneficial.

9. Responsibilities.

a. The Associate Administrator for Acquisition Policy will:

(1) Ensure GSA's implementation of Public Law 100-418.

(2) Represent GSA on the ICMP.

(3) Establish GSA policy for use of the metric system of measurement and approve or disapprove deviations from that policy.

(4) Ensure appropriate GSA office representation on MOC subcommittees.

(5) Appoint the GSA Metric Coordinator to serve on the MOC and its Executive Committee and to chair the GSA Metric Steering Group.

b. The GSA Metric Steering Group will formulate metric policy for the approval of the Associate Administrator for Acquisition Policy.

c. The Associate Administrator for Administration (C) will identify and coordinate appropriate metrication training programs for GSA employees.

d. The Associate Administrator for Public Affairs (X) will:

(1) Advise, clear, coordinate, and assist in the production of all publications and audiovisuals proposed by GSA services and staff offices to inform other Federal agencies or the public of new uses of the metric system in GSA programs. Projects must be coordinated and cleared, in the proposal stage, with the Publications Division (XSP), Office of Internal Communications (XS), Office of the Associate Administrator for Public Affairs (X), by means of a GSA Form 3375, Proposal Brief for Publications and Audiovisuals. Procedures and applicabilities are detailed in GSA Order, Clearance and Coordination of GSA Publications and Audiovisuals (ADM 1035.6B).

(2) Devise and implement economical, effective means for informing GSA employees of new uses of the metric system within the agency and for increasing employee understanding of the metric system of measurement.

e. The Comptroller (B) will include in annual budget submissions to the Congress GSA's progress in implementing the metric system pursuant to section 12 of Public Law 100-418 (see paragraph 10).

f. Central Office services and staff offices and regional offices will:

(1) Designate an organizational element to monitor metric conversion activities for which they are responsible;

(2) Appoint an individual as their Metric Coordinator; and

(3) Develop metric guidelines applicable to their specific mission and responsibility. Guidelines will be consistent with this order, the "Metric handbook for Federal Officials" (available from the National Technical Information Service, #PB89-226922) regarding the selection of proper metric units and symbols, and guidelines and interpretations developed by the GSA Metric Steering Group (see paragraph 11b).

10. Reporting.

a. Central Office services and staff offices and regional offices shall submit to the Office of Acquisition Policy, by November 1, of each year, a report for the past fiscal year including:

(1) Significant metric information, milestones, or accomplishments;

(2) Significant problems encountered in metric conversion;

(3) Any recommendations regarding GSA Metric Program policy or activities, including actions planned for the current fiscal year to further implement the metric system; and

(4) Other relevant information (e.g., see paragraph 6i).

b. The GSA Metric Coordinator shall consolidate the above reports into an annual GSA Metric Report. This report shall be submitted for approval to the Associate Administrator for Acquisition Policy by December 1 of each year. The Associate Administrator for Acquisition Policy shall present the final report to the Administrator by January 1 of each year for submission to Congress as part of the annual budget following section 12 of Public Law 100-418.

c. The reporting shall cease in the year after full implementation by GSA of the metric system.

11. Program operation.

a. The GSA Metric Program will be operated through a Metric Steering Group, chaired by the GSA Metric Coordinator, and shall include a Metric Coordinator from each affected Central Office service and staff office. General guidance for the GSA Metric Steering Group will be provided by the Associate Administrator for Acquisition Policy as necessary.

b. The GSA Metric Steering Group will meet as necessary to assist in achieving a uniform and coordinated approach to implementing the requirements of Public Law 100-418. Guidelines and interpretations will be developed by the group.

12. **Report.** Report control number ADM-47 is assigned to this order.

13. **Forms.** This order provides for the use of GSA Form 3375, Proposal Brief for Publications and Audiovisuals. Additional forms should be obtained by forwarding an original and two copies of GSA Form 49, Requisition/Procurement Request for Equipment, Supplies, or Services, to: General Services Administration, National Forms and Publications Center, Warehouse 4, Dock No. 1, 4900 South Hemphill Street, Fort Worth, TX 76115.

14. **Implementing actions.** Heads of Services and Staff Offices and Regional Administrators, in coordination with appropriate officials, shall initiate all actions necessary to implement this order.

General Services Administration

Metric Transition Plan

Introduction

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418) designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce. It requires that:

" * * Each Federal agency, by a date certain and to the extent economically feasible by the end of fiscal year 1992, use the metric system of measurement in its procurements, grants, and other business-related activities, except to the extent that

such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms, such as when foreign competitors are producing competing products in non-metric units."

The law also requires each agency to issue implementing guidelines, and to report annually to Congress on actions taken or planned to implement the metric system. GSA Order ADM 8000.1A provides the implementing guidelines required by the law.

This plan describes a comprehensive and integrated program to comply with section 5164 and GSA Order ADM 8000.1A. The plan is intended as a practical approach to metric transition that is consistent with our role as the Government's business manager.

Many of the transition tasks to be accomplished under this plan will, as they progress, make it easier to acquire metric supplies and services. Recognizing our dependence upon the transition efforts of our suppliers, our actions will be closely coordinated with the private sector and should act as stimulants to industries to increase their competitiveness in the world's metric marketplace.

This plan discusses our overall strategy for metrication, defines general requirements and procedures for transition efforts, and details the tasks to be accomplished by designated GSA organizations. Each task description includes a background section on current status and needs, a list of required actions, goals (milestones), and responsibility assignments. The plan will be dynamic in that it will be updated periodically to redefine the tasks when needed, add actions and goals, and to include new tasks as necessitated by the transition activities of other agencies or the private sector.

Metrication Strategy

GSA has supported use of the metric system of measurement in its program since the passage of the Metric Conversion Act of 1975. Because of the emphasis on voluntary transition efforts in the Act, our actions were primarily limited to monitoring industry and procuring metric products meeting our needs if and when they became available. The conversion to metric by the automotive industry, farm equipment manufacturers, and, to some extent, other industries plus the move to the metric system by virtually all other countries make it inevitable that the U.S. become a metric-based nation. The metric system, specifically the International System of Units (or SI from the French "Le Systeme International d'Unites"), is inherently simpler to use

than the inch-pound system (often referred to as the English system). The potential benefits to the U.S. of using metric become more and more apparent.

The U.S. must operate in a global and increasingly metric marketplace. Regional economic blocks of metric countries may restrict the acceptance of nonmetric products. A new trade agreement with metric Canada will expand the number of potential customers. Our technical leadership is being challenged by many countries throughout the world. Domestic firms wishing to meet their international customers' desires or requirements will need to change to metric or produce their items in foreign plants.

The new national policy on metric usage necessitates a significant broadening of the scope of our transition efforts. All procurements, grants, and business-related activities are now affected. GSA's efforts will be fully integrated with the efforts of the entire Government. In fact, because of our many responsibilities as the Government's business manager, it is incumbent on GSA to take a leadership role in metric transition. We must complete our transition by a date to be established and if feasible by the end of fiscal year 1992. Therefore, rather than each GSA component implementing metric policy according to its particular needs and resources, an integrated approach is necessary.

Our basic strategy, which recognizes the commercial market place in which we deal, will be to procure in metric when metric is the accepted industry measurement system. While metric is not yet the accepted industry system, soft metric, hybrid, or dual systems may be used during transition. As soon as practical, soft, dual, and hybrid measurements will be replaced with hard metric measurements. This policy should encourage our suppliers to learn to use the metric system if they have not already done so.

The tasks defined below address metric transition issues affecting all of GSA. Successful completion of the tasks will facilitate GSA's transition to the metric system. The use of a management information system, regular reviews and periodic reports, and a well planned public affairs program will enable us to define objectives and track accomplishments while obtaining needed support by keeping GSA personnel and the public aware of what we are doing and where we are going.

The Associate Administrator for Acquisition Policy (V) is responsible for managing the implementation of this plan. The GSA Metric Steering Group will review transition efforts and

provide assistance and coordination as appropriate. A Central Office service or staff office is designated as Office of Primary Responsibility (OPR) for each task. Supporting the task OPR will be other components, i.e., Offices of Collateral Responsibility (OCR), having adequate authority and expertise for the actions needed. Ad hoc panels and groups will be established by the task OPR as needed.

The GSA Metric Steering Group will, based on its review of the task plans, propose measurable GSA-wide objectives and target dates. The proposed objectives and dates will be coordinated with the Central Office services and staff offices and forwarded by the Associate Administrator for Acquisition Policy to the Administrator by June 30, 1990, in a status report.

GSA and other Federal agencies must each establish a date, per section 5164, by which they will use the metric system of measurement in procurements, grants and other business-related activities. Significant progress must be made under the tasks before such a date can be determined. Additionally, our transition is dependent to an extent on the transition efforts of other agencies. The selection of a date must be coordinated with them even if the same date is not used by all agencies. The GSA Metric Steering Group will, by October 31, 1990, recommend a date of if not possible at that time, will identify when the date can be established. Once the date has been established, appropriate changes will be made to existing policies, directives and procedures to reduce or eliminate barriers to use of the metric system.

General Requirements and Procedures

The general metric transition initiatives and efforts needed to comply with the law are addressed in the next section as tasks. Each task description includes major milestones or goals. Unless otherwise indicated, each task OPR will prepare a task plan detailing specific efforts, approaches to preparing any required long-term plans, initiation and completion milestones, team membership, other Government and non-government organizations to be involved, and methods to measure accomplishments. The task plans will be submitted through the GSA Metric Steering Group to the Associate Administrator for Acquisition Policy by May 31, 1990, for approval. The task descriptions will be updated to include the major goals cited in the approved task plans.

Tasks will be added, revised, or closed by the Associate Administrator for Acquisition Policy as recommended

by the steering group. Minor revisions to the approved task plans may be authorized by the steering group. The steering group will review the progress under each task quarterly or more often when necessary. Each steering group member will ensure that task OPRs within their organization are adequately supported.

The Office of Acquisition Policy will provide management support to the GSA Metric Steering Group as detailed under Task 1. Task OPRs will provide brief quarterly progress reports in letter format to the OAP (August 1, November 1, February 1, and May 1). The annual report to the Congress will be prepared by the OAP based on inputs from the steering group and task OPRs. The report will be coordinated with the steering group and approved by the Administrator.

Most of the tasks will require close cooperation with other agencies and the private sector. OPRs should contact the Office of Metric Programs within the Department of Commerce (202-377-3036), the U.S. Metric Association (USMA) (818-715-2382), or the American National Metric Council (ANMC) (202-628-5757) for information on transition activities outside GSA. Recognizing that transition is inevitable, it is imperative that actions be planned and executed to ensure the transition is as efficient and economical as possible.

A common requirement under all tasks will be the identification and elimination of barriers to the procurement and/or use of metric products. Recommendations for change will be submitted to the steering group (via the OAP) for review and concurrence, after which the task OPR will forward the recommendation to the cognizant organization for appropriate action. The task OPR will inform the OAP if any approved recommendation is not being implemented expeditiously.

Task 1: Transition Management

Background

Implementation of this plan will require the involvement of organizations throughout GSA. The various tasks must be integrated and activities closely monitored. An annual report to the Congress is required. A central source of information is needed to avoid duplicate efforts.

Action Required

Provide management support to the GSA Metric Steering Group.

Assist task OPRs.

Maintain a reference library of metric transition publications and related items.

Prepare necessary reports.

Create and operate a management information system to monitor and report on all tasks.

Be a point of contact for external organizations.

Receive all correspondence from the task groups for the steering group.

Goals

Activate GSA Metric Steering Group. 11/15/88 (Accomplished).
Issue GSA Order ADM 8000.1A. 02/12/90 (Accomplished).
Issue tasks..... 03/15/90.

Responsibility

OPR—Office of Acquisition Policy
OCR—GSA Metric Steering Group

Task 2. Education and Training

Background

Because the law requires agencies to use the metric system in procurements, grants, and other business-related activities, a comprehensive program to educate personnel throughout the agency is needed. Personnel who are required to use metric will receive specific training. Experience in the private sector indicates that one or two days may be sufficient for the education programs. Rather than have each component or subordinate organization develop education courses, a common needs package can be developed and used by all appropriate program areas. It may also be appropriate to provide brochures and briefings to all personnel, explaining the metric system and why and how GSA is going to use it.

Action Required

Develop and implement a comprehensive metric education program including brochures and briefings for GSA personnel. Work with services to identify specific metric education requirements for skill training programs.

Goals

Submit task plan to the GSA Metric Steering Group. 04/30/90.
(Others per task plan)

Responsibility

OPR—Office of Administration (C)
OCR—Office of Public Affairs (X)

Task 3. Specifications and Standards

Background

Specifications and standards currently used by GSA may be inch-pound, metric or non-measurement sensitive. Only a small percentage of the documents listed in the GSA Index of Federal Specifications, Standards, and Commercial Item Descriptions are metric. Priority should be given to the identification and conversion of measurement sensitive documents to metric. Ideally, the new documents should be "hard" metric rather than just "soft" (converting inch-pound units to metric equivalents). However, because we acquire commercial supplies and services, it may be appropriate to soft convert or use dual English/metric measurements. The transition to metric should be used as an opportunity to adopt commercial standards in lieu of preparing new documents, avoid the proliferation of part sizes, and combine similar documents whenever possible.

Action Required

Identify measurement sensitive documents with the potential for conversion to metric. Establish projects to convert the documents as quickly as possible.

Goals

Submit task plan to GSA Metric Steering Group. 04/30/90.
(Others per task plan)

Responsibility

OPR—FSS
OCR—PBS, IRMS

Task 4. Construction

Background

Construction in the U.S. is almost totally in inch-pounds and will probably be one of the last industries to transition fully to metric. The long life of buildings, dams, factories, etc., means that inch-pound repair parts may be needed for decades after transition. On the other hand, as products to be installed in buildings, etc., transition to metric, the construction industry will have to accommodate them. Construction projects overseas by U.S. firms are based on the measurement system required by the customers. Industry already has experience adapting to metric in the design of construction projects at overseas locations. The export of metric building materials by U.S. companies is very limited, but growing. To satisfy the requirements of the law, GSA must work closely with

the construction subcommittee under the Interagency Committee on Metric Policy (ICMP), and in turn with the construction industry in the development of short- and long-range transition plans.

Action Required

Establish a GSA metric transition working group responsible for developing and implementing plans in coordination with the ICMP construction subcommittee and appropriate industry associations. The working group should identify bulk materials and such items as heating, plumbing, and electrical equipment, door and window sizes, floor coverings, etc., which can be procured in metric quantities and measurements.

Goals

Submit task plan to GSA Metric Steering Group..... 04/30/90
(Others per task plan)

Responsibility

OPR—PBS
OCR—FSS
External—ICMP Construction Subcommittee

Task 5. Electronics

Background

Electronic devices were designed for years throughout the world using the inch-pound system. Currently, electronic devices are also designed in metric, particularly by foreign manufacturers, or with dual or hybrid systems. Some domestic manufacturers are reported to have voluntarily adopted the metric system.

Action Required

Determine the extent to which the metric system is currently used in the electronics industry, both domestic and foreign. Develop a plan to encourage the electronics industry to transition fully to the metric system.

Goals

Submit task plan to GSA Metric Steering Group..... 04/30/90
(Others per task plan)

Responsibility

OPR—IRMS

OCR—FSS, PBS

Task 6. Small Business

Background

Public Law 100-418 specifies that the Federal Government has a responsibility to develop procedures and techniques to assist industry, especially small businesses, as they voluntarily convert to the metric system. GSA must work with other Federal agencies and even the States to encourage essential small businesses to transition to the metric system.

Action Required

Develop and implement a plan to inform small businesses of the intent of Public Law 100-418 and to assist them in adopting the metric system.

Goals

Submit task plan to GSA Metric Steering Group..... 04/30/90
(Others per task plan)

Responsibility

OPR—AU
OCR—FSS, IRMS, PBS, C, X

Task 7. Internal and Public Affairs

Background

Even though Congress established the metric system as the preferred system of measurement, many individuals lack interest in or feel threatened by transition efforts. Some people believe their businesses will be hurt or their jobs put in turmoil. Most opposition is caused by lack of understanding of the metric system and how it will be used in and by the Government.

GSA's metric transition efforts are likely to succeed with GSA employees and the private sector in proportion to how well GSA informs them of what the agency is doing, and why. This, in turn, hinges on cooperation between the GSA services and staff offices introducing new uses of the metric system and the Office of Public Affairs (X).

Each GSA service and staff office has the responsibility of consulting with Public Affairs at an early stage in introducing a new use of metric or a new metric program. At the initial consultation, a program office should provide factual written explanations of the metric transition change; how GSA is introducing the change; what it will mean to client agencies, supplier businesses, the general public, and/or GSA employees; the types of reference materials the audience will need or

want and where to get them; and contact points for telephone or written inquiries.

The Office of Public Affairs has the responsibility of wording metric transition information effectively, shaping it for internal or external audiences, finding appropriate modes of presentation (news releases, posters, pamphlets, speakers, audiovisuals), supervising production of print or visual items, and targeting distribution.

Action Required

Each service and staff office with primary responsibility for a task in the transition plan should contact the Office of Public Affairs once tasks outlined in the metric transition plan are moving into action and program changes are underway.

Goals

Contact the Office of Public Affairs with written explanations of metric transition actions as soon after April 30, 1990, as program support for the actions begins.

Responsibility

OPR—V, C, AU, FSS, PBS, IRMS, OCR—X

Task 8. Metrication Handbook

Background

Acquisition organizations procuring metric supplies and services will face new management challenges caused by the change in measurement systems. Some systems may be a mix of metric and nonmetric. The effective control of interfaces among the metric and nonmetric parts requires special management procedures. Program offices must determine how much of the system will be hard metric, soft metric, dual English/metric, hybrid, or nonmetric. Should exceptions be included in the contract or should each require specific approval? What units should be used in technical data, drawings, reports, briefings, etc? How were sources of metric parts identified? The lessons learned by organizations experienced in the development and acquisition of metric products should be shared. The creation of a handbook describing potential metrication issues and suggested solutions would be a valuable guide for acquisition offices and provide consistency in the way they approach metrication. The handbook content should initially be provided by the acquisition organizations currently managing metric programs. Additions could then be provided by acquisition offices to keep the handbook current.

Action required

Develop a metrication handbook for acquisition offices based on experiences of organizations currently acquiring metric supplies and services. Issue revisions to the handbook in the future.

Goals

Submit task plan to GSA Metric Steering Group..... 05/31/90
(Others per task plan)

Responsibility

OPR—OAP (V)
OCR—GSA Metric Steering Group
[FR Doc. 90-7971 Filed 4-5-90; 8:45 am]
BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those information collections recently submitted to OMB.

1. IV-A Perspectives Questionnaire—New—A national survey of local welfare office eligibility workers will be conducted to measure the level of understanding of the provisions of the Family Support Act of 1988. The information will be used in the development of training and technical assistance materials. *Respondents:* Local welfare office eligibility workers; *Number of Responses:* 3000; *Frequency of Response:* one time; *Average Burden per Response:* 28 minutes; *Total Burden:* 1400 hours.

OMB Desk Officer: Angela Antonelli.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 245-6511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: March 27, 1990.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 90-7720 Filed 4-5-90; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Cooperative Agreements for Drug Abuse Treatment Improvement Projects in Target Cities; Correction

OFFICE: Office for Treatment Improvement, ADAMHA, HHS.

ACTION: Request for applications for cooperative agreements for drug abuse treatment improvement projects in target cities; correction.

SUMMARY: Public notice was given in the *Federal Register* on March 15, 1990, Vol. 55, No. 51, Pages 9764-9771 that the Office for Treatment Improvement, ADAMHA, would accept applications for cooperative agreements for drug abuse treatment improvement projects in target cities. On Page 9770, Appendix A—Cities with a Population Over 315,000 in 1986—a listing of the 50 eligible cities was cited. The city of San Juan, Puerto Rico, was inadvertently left out. San Juan has subsequently been informed of its eligibility.

CONTACT FOR FURTHER INFORMATION: Walter Faggett, M.D., Office for Treatment Improvement, ADAMHA, 5600 Fishers Lane, Rockwall II Building, 10th Floor, Rockville, Maryland 20857, (301) 443-6501.

Joseph R. Leone,

Associate Administrator for Management, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-7959 Filed 4-5-90; 8:45 am]

BILLING CODE 4160-20-M

Technical Assistance Workshops in April

OFFICE: Office for Treatment Improvement.

ACTION: Notice of technical assistance workshops.

SUMMARY: This notice sets forth the schedule and proposed agenda for the forthcoming three (3) regional technical assistance workshops to assist prospective applicants in responding to the following Office for Treatment Improvement's (OTI) announcements: Cooperative Agreements for Drug Abuse

Treatment Improvement Projects in Target Cities; Disaster Relief Assistance Grants for Drug Abuse Treatment; Model Comprehensive Treatment Programs for Critical Populations; and other OTI programs. Applications for these programs will be received on May 23 and June 1.

Region/Date/Location

Eastern Region

April 16-17, 1990

Hyatt Regency Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001, (202) 737-1234

Western Region

April 26-27, 1990

Sheraton on Harbor Island, 1380 Harbor Island Drive, San Diego, California 92101, (619) 291-2900

Central Region

April 30-May 1

Stouffer Concourse Hotel, 9801 Natural Bridge Road, St. Louis, Missouri 63134, (314) 429-1100

Time: Each workshop will begin on Day 1 at 1 p.m. and will end on Day 2 at 1 p.m.

Agenda Highlights include:

Day 1—Introduction to the Office for Treatment Improvement. Practical aspects of grant application process, including completing forms and budget justification.

Day 2—Technical and program aspects of grant application process, including program narrative, approach, method, management, and evaluation.

Status of Workshops: Open to prospective OTI grant applicants.

A block of rooms at special rates is being held at each hotel. Attendees should make hotel reservation directly with the hotel and identify themselves as an attendee at the Office for Treatment Improvement Technical Assistance Workshop.

Contact: Kathleen Hauck, Technical Resources, Inc., Suite 200, 3202 Tower Oaks Boulevard, Rockville, Maryland 20852, (301) 230-4798

Purpose: The Office for Treatment Improvement will provide general assistance through these workshops to prospective applicants in responding to OTI grant announcements.

Joseph R. Leone,

Executive Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 90-8036 Filed 4-5-90; 8:45 am]

BILLING CODE 4160-20-M

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following is the *Federal Register* submission for FSA.

(For a copy of the package below, call the FSA, Reports Clearance Officer on 202 252-5604)

Child Support Enforcement Transmittal Forms Package—0970-0085—The information obtained by this package (FSA-200, 201, 202, 203, 204, 205, 206) will be used by state and local agencies to work interstate child support cases. 45 CFR 303.7 requires initiating states to provide responding states sufficient, accurate information to act on the cases by providing necessary documentation and the standard interstate forms package referred to herein. **Respondents:** States or local governments; **Number of Respondents:** 54; **Frequency of Response:** 7,481; **Average Burden per Response:** 19 minutes; **Estimated Annual Burden:** 127,933 hours.

OMB Desk Clearance Officer:
Shawannah Koss-McCullum.

Written comments and recommendations for the proposed information collection should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, room 3201, 725 17th Street, NW, Washington, DC 20503

Dated: March 12, 1990.

Naomi B. Marr,

Associate Administrator, Office of Management and Information Systems, FSA.

[FR Doc. 90-8055 Filed 4-5-90; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 90N-0132]

Animal Drug Export; Hyonate (Hyaluronate Sodium) Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Mobay Corp., Animal Health Division, has filed an application requesting approval for export to Canada of the animal drug Hyonate (hyaluronate sodium) Injection.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of animal drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT:

Beverly E. Bartolomeo, Center for Veterinary Medicine (HFV-143), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2855.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the *Federal Register* within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Mobay Corp., Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, has filed an application requesting approval for export to Canada of the animal drug Hyonate (hyaluronate sodium) Injection. The product is intended for use in the treatment of joint dysfunction in horses.

The application was received and filed in the Center for Veterinary Medicine on March 30, 1990, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets

Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by (April 16, 1990, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: April 3, 1990.

Robert C. Livingston,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 90-8039 Filed 4-5-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90E-0091]

Determination of Regulatory Review Period for Purposes of Patent Extension; Dalgan®

AGENCY: Food and Drug Administration HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Dalgan® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by

FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Dalgan® (dezocine injection) which is indicated for the management of pain when the use of an opioid analgesic is appropriate. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Dalgan® (U.S. Patent No. 4,001,331) from American Home Products Corp. and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 19, 1990, advised the Patent and Trademark Office that the human product had undergone a regulatory review period and that the approval of dezocine injection, represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Dalgan® is 6,043 days. Of this time, 3,697 days occurred during the testing phase of the regulatory review period, while 2,346 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: June 15, 1973. The applicant claims June 14, 1973, as the date the investigational new drug (IND) application for Dalgan® became effective. However, FDA

records indicate that the IND became effective June 15, 1973.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: July 29, 1983. FDA has verified the applicant's claim that July 29, 1983, was the date the new drug application (NDA) for Decabid® (NDA 19-082) was initially submitted.

3. The date the application was approved: December 29, 1989. FDA has verified the applicant's claim that NDA 19-082 was approved December 29, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 5, 1990, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 3, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 2, 1990.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 90-8042 Filed 4-5-90; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 90E-0090]

Determination of Regulatory Review Period for Purposes of Patent Extension; Decabid®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Decabid® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug become effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Decabid® (indocainide hydrochloride) which is

indicated for the treatment of documented ventricular arrhythmias, such as sustained ventricular tachycardia, that in the judgment of the physician, are life threatening. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Decabid® (U.S. Patent No. 4,452,745) from Eli Lilly and Co. and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 16, 1990, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the approval of indocainide hydrochloride, represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Decabid® is 3,272 days. Of this time, 2,547 days occurred during the testing phase of the regulatory review period, while 725 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: January 15, 1981. FDA has verified the applicant's claim that January 15, 1981, was the date the investigational new drug (IND) application for Decabid® became effective.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: January 5, 1988. FDA has verified the applicant's claim that January 5, 1988, was the date the new drug application (NDA) for Decabid® (NDA 19-693) was initially submitted.

3. The date the application was approved: December 29, 1989. FDA has verified the applicant's claim that NDA 19-693 was approved on December 29, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 5, 1990, submit to the Dockets Management Branch (address above) written comments and ask for a

redetermination. Furthermore, any interested person may petition FDA, on or before October 3, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 2, 1990.

Stuart L. Nightingale,
Associate Commissioner for Health Affairs.
[FR Doc. 90-8043 Filed 4-5-90; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 90E-0089]

Determination of Regulatory Review Period for Purposes of Patent Extension; Fluosol®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Fluosol® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-433-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so

long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Fluosol® (20 percent intravascular perflurochemical emulsion) which is indicated to prevent or diminish myocardial ischemia, as manifested by decreased ventricular wall motion and global ejection fraction, occurring during percutaneous transluminal coronary angioplasty in patients at high risk of ischemic complications of angioplasty. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Fluosol® (U.S. Patent No. 3,911,138) from Alpha Therapeutic Corp. and requested FDA's assistance in determining the patent's eligibility for patent term restoration. FDA, in a letter dated March 19, 1990, advised the Patent and Trademark Office that the human drug product had undergone a regulatory review period and that the approval of 20 percent intravascular perflurochemical emulsion, represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Fluosol® is 3,676 days. Of this time, 2,569 days occurred during the testing phase of the regulatory review period, while

1,107 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: December 5, 1979. The applicant claims November 21, 1979, as the date the investigational new drug (IND) application for Fluosol® became effective. However, FDA records indicate that the IND became effective on December 5, 1979.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: December 16, 1986. The applicant claims December 12, 1986, as the date the drug application for Fluosol® (NDA 86-0909) was initially submitted. However, FDA records indicate that the application was not received until December 16, 1986.

3. The date the application was approved: December 26, 1989. FDA has verified the applicant's claim that NDA 86-0909 was approved on December 26, 1989.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 730 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before June 5, 1990, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before October 3, 1990, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-43, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 2, 1990.
 Stuart L. Nightingale,
 Associate Commissioner for Health Affairs.
 [FR Doc. 90-8044 Filed 4-5-90; 8:45 am]
 BILLING CODE 4160-01-M

[Docket No. 89M-0357]

Alcon Laboratories, Inc.; Premarket Approval of Models J318, J319, J329, J338, J339, and J349 Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Alcon Laboratories, Inc., Brentwood, TN, for premarket approval, under the Medical Devices Amendments of 1976, of the Models J318, J319, J329, J338, J339, and J349 Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 17, 1989, of the approval of the application.

DATES: Petitions for administrative review by May 7, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration 1390 Piccard Dr., Rockville, MD 20850, 301-427-1212.

SUPPLEMENTARY INFORMATION: On November 4, 1988, Alcon Laboratories, Inc., Brentwood, TN 37207, submitted to CDRH an application for premarket approval of the Models J318, J319, J329, J338, J339, and J349 Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses. The devices are intended for primary implantation for the visual correction of aphakia in patients 60 years of age or greater. They are designed for ciliary sulcus or capsular bag placement following the removal of a cataractous crystalline lens by extracapsular cataract extraction. The devices are available in a range of powers from 10 diopters (D) through 30 D in 0.5 D increments.

On April 13, 1989, the Ophthalmic Devices Panel, an FDA advisory

committee, reviewed and recommend approval of the application. On August 17, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

Under the amendments, intraocular lenses are regulated as class III devices (premarket approval). A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 7, 1990, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 30, 1990.
 Walter E. Gundaker,
 Acting Deputy Director, Center for Devices and Radiological Health.
 [FR Doc. 90-8040 Filed 4-5-90; 8:45 am]
 BILLING CODE 4160-01-M

[Docket No. 89M-0353]

IOLAB Corp.; Premarket Approval of Model H107G UVBLOC Plus (LC) Posterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by IOLAB Corp., Claremont, CA, for premarket approval, under the Medical Device Amendments of 1976, of the Model H107G UVBLOC Plus (LC) Ultraviolet-Absorbing Posterior Chamber Intraocular Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of August 18, 1989, of the approval of the application.

DATES: Petitions for administrative review by May 7, 1990.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1212.

SUPPLEMENTARY INFORMATION: On April 18, 1988, IOLAB Corp., Claremont, CA 91711, submitted to CDRH an application for premarket approval of the Model H107G UVBLOC Plus (LC) Ultraviolet-Absorbing Posterior Chamber Intraocular Lens. The device is intended to be used for primary implantation for the visual correction of aphakia in patients 60 years of age or

older where a cataractous lens has been removed by extracapsular extraction methods. This lens is intended to be placed in the ciliary sulcus or capsular bag. The device is available in a range of powers from 4 diopters (D) through 34 D in 0.5 increments.

On October 19, 1988, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On August 18, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

Under the amendments, intraocular lenses are regulated as class III devices (premarket approval). A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Nancy C. Brogdon (HFZ-460), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 7, 1990, file with the Dockets Management Branch (address above)

two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: March 30, 1990.

Walter E. Gundaker,
Acting Deputy Director, Center for Devices
and Radiological Health.

[FR Doc. 90-8041 Filed 4-5-90; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1990:

Name: Advisory Council on Nurses Education.

Date and time: May 16-17, 1990, 9 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on May 16, 9 a.m.—12:30 p.m.

Closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Amendments of 1985 (Pub. L. 99-92). The Council also performs final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting will cover announcements; considerations of minutes of previous meeting; report by the Director, Bureau of Health Professions, the Director, Division of Nursing and staff reports. The meeting will be closed to the public on May 16, at 12:30 p.m. for the remainder of the meeting for the review of grant applications for Advance Nurse Education applications, Nurse Practitioner/Nurse Midwifery applications, Special Project Grants applications and Nursing Opportunities for Individuals from Disadvantaged Backgrounds applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and

Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, Room 5C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6193.

Agenda Items are subject to change as priorities dictate.

Dated: April 3, 1990.

Jackie E. Baum,
Advisory Committee Management Officer,
HRSA.

[FR Doc. 90-8038 Filed 4-5-90; 8:45 am]

BILLING CODE 4160-15-M

Designation of Medically Underserved Populations and Areas

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: Under the provisions of section 330(b)(6) of the Public Health Service (PHS) Act, 42 U.S.C. 254c(b)(6), as amended by Pub. L. 99-280, the Governors of the States of Hawaii and Maine have asked the Secretary of Health and Human Services (HHS) to designate specific populations within their States as medically underserved populations (MUPs). Also, under section 330(b)(3) of the PHS Act, certain geographic areas in the States of Missouri, Nebraska, South Carolina, South Dakota, and Washington have been proposed for designation as medically underserved areas (MUAs). This notice provides an opportunity for State and local officials, State organizations representing Community Health Centers, and other interested parties in the above-mentioned States to provide recommendations and to comment on the proposals to designate as medically underserved the areas and populations described in this notice.

DATES: Comments should be in writing and should be received by May 7, 1990.

If no adverse comments are received within this period, the areas and populations specified in this notice will be designated as medically underserved by the Secretary, effective May 7, 1990. If adverse comments supported by objective data are received on one or more of these proposed designations, the Secretary will, within 75 days from the date of publication of this notice, review the data and comments received together with the data already provided and any relevant information otherwise

available; grant, modify or deny designation of the population(s)/area(s) involved as MUPs/MUAs, as appropriate based on the review; and provide written responses to the commentors.

ADDRESSES: Mail comments to Ms. Rhoda Abrams, Director, Office of Program and Policy Development, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 7A-08, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Lee, Director, Office of Shortage Designation, Bureau of Health Care Delivery and Assistance, 5600 Fishers Lane, Room 4-101, Rockville, Maryland 20857, (301) 443-6932.

SUPPLEMENTARY INFORMATION: Section 330 of the PHS Act provides that grants may be made to public and nonprofit private entities to plan, develop and operate Community Health Centers which serve medically underserved populations. Section 330(b)(3) of the PHS Act (42 U.S.C. 254c(b)(3)) defines a medically underserved population as the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services. On September 2, 1975, and October 15, 1976, the Department of Health and Human Services published criteria in the *Federal Register* for use in designating and prioritizing such medically underserved areas (MUAs), and the Secretary has made designations and dedesignations of MUAs using these criteria. According to the published criteria, an area must have an Index of Medical Underservice (IMU) score of 62 or less to be recommended for addition to the MUA list.

The PHS Act, as amended in 1986 by Public Law 99-280, provides at section 330(b)(6) that the Secretary may also designate a medically underserved population (MUP) which does not meet the published criteria if the chief executive officer and local officials of the State in which such a population is located recommend the designation of that population, based on unusual local conditions which are a barrier to access to, or availability of, personal health services. The amendments to section 330 made by Public Law 99-280 also provide (in section 330(b)(5)) that the Secretary must notify and provide an opportunity for comment by and consultation with the chief executive officer and local officials of the State, and any State organization which represents a majority of the Community Health Centers in such State, before designating

or terminating the designation of an MUP (or MUA) in such State.

HHS is currently developing a regulation which will specify MUP/MUA criteria, procedures for designation of areas and populations which meet those criteria, procedures for designation of populations recommended by State and/or local officials which do not meet the criteria but have unusual local conditions limiting access or availability, and procedures for providing the notifications and opportunities for comment required by the law. The Secretary has determined that it would be inappropriate to delay acting on those MUP and MUA designation requests already received until these regulations are published. Therefore, the Health Resources and Services Administration (HRSA) is publishing this notice as a way of seeking comments and recommendations on these proposed designations from State and local officials of the affected areas, from organizations which represent a majority of the Community Health Centers in the States involved, and from other interested or affected parties.

The populations and areas which have been recommended for designation as medically underserved are:

1. Hawaii—Waimanalo

The community of Waimanalo (Census Tract 113) is an isolated rural area on the Island of Oahu. It is bounded on the northeast by the Pacific Ocean and on the south and west by the Koolau Mountain Range. The estimated population of 9,132 is served by 2.1 full-time-equivalent (FTE) primary care physicians.

The values of the four basic medical underservice indicators are as follows for Waimanalo:

Indicator	Percent/ rate/ratio	Weighted value
Population below poverty level (as a percentage of resident civilian population)	14.0	18.7
Population age 65 and older (as a percentage of resident civilian population)	5.4	20.2
Infant mortality rate (infant deaths per 1,000 live births)	12.4	22.4
Primary care physician-to-population ratio (primary care physicians per 1,000 resident civilian population)	0.22	4.1
Total IMU score		65.4

The Waimanalo area's IMU score is therefore slightly above the maximum value of 62.0 allowed for MUA designation. However, the Governor of Hawaii has requested an MUP designation based on the following additional factors:

Native Hawaiians comprise 50 percent or more of the population of Waimanalo. Native Hawaiians are at high risk for morbidity and Native Hawaiian mortality rate (for death from all causes) was 44 percent higher than the State rate for the period 1980-1986.

The Waimanalo mortality rate (for all causes) was 57 percent higher than the State rate for 1986-1987. The Waimanalo suicide rate is more than twice the State rate. The residents of Waimanalo have higher rates for late prenatal care, low birth weight, infant mortality, fetal deaths, teen births, and births to unmarried women than the residents of the State as a whole.

Waimanalo residents are on average younger, less educated, and have lower incomes compared to the State as a whole. They are less able to afford health services and less likely to have health insurance. None of the private physicians in Waimanalo and none of the health care providers in neighboring communities offer services on a sliding-fee scale based on family income and size.

Health services in Waimanalo do not appear to be adequate to meet community needs. According to a recent need/demand assessment conducted by the Waimanalo Health Center, an additional 3 or 4 physicians are needed there to meet the existing demand for health services.

2. Maine—Fort Kent

The Fort Kent Primary Care Analysis Area (PCAA) is one of the 62 analysis areas used by Maine as the rational geographical units for planning for the delivery of primary care services in the State. The Fort Kent PCAA consists of the following divisions in Aroostook County: Eagle Lake, Fort Kent, Frenchville, Madawaska, New Canada and St. Agatha Towns; Wallagrass and Winterville Plantations; and Square Lake Unorganized Territory. It has an estimated population of 13,615 served by 6.5 FTE primary care physicians. Eagle Lake Town, St. Agatha Town, and Wallagrass Plantation in the Fort Kent PCAA are currently individually designated as MUAs.

The values of the four basic medical underservice indicators are as follows for the Fort Kent PCAA:

Indicator	Percent/ rate/ratio	Weighted value
Population below poverty level (percent).....	14.6	17.4
Population age 65 and over (percent).....	13.7	18.9
Infant mortality rate.....	6.4	26.0
Primary care physician-to-population ratio.....	0.77	12.6
Total IMU score.....		74.9

The IMU score for the Fort Kent PCAA as a whole exceeds the maximum value of 62.0 allowed for MUA designation. However, the Governor of Maine has requested an MUP designation based on the following additional factors:

The Fort Kent area is facing a severe shortage of obstetrical services. There is no obstetrician practicing in either the Fort Kent PCAA or in the contiguous Van Buren and Allagash PCAAs. A family practitioner associated with the Eagle Lake Health Center has been handling deliveries at the hospital in Fort Kent. Recent data indicate that 12.5 percent of the women in the Fort Kent PCAA receive inadequate prenatal care, compared to a statewide average of 0.59 percent. Also, the percentage of the population below the poverty level in Kent Town, the largest community in this PCAA, is 21.2, and the 14.6 percent rate for the Fort Kent PCAA is higher than the State average of 13 percent.

East of the Fort Kent PCAA lies the Van Buren PCAA, which is a designated primary medical care health manpower shortage area (HMSA) and an MUA. The recent closing of the Van Buren Community Hospital there has placed additional pressure on Fort Kent's existing medical care resources. The Allagash PCAA, west of the Fort Kent PCAA, is designated both as an MUA and as a primary medical care HMSA. The St. Francis Health Center in the Allagash PCAA closed recently due to the lack of a provider, also placing additional demands on the primary care providers in Fort Kent.

3. Missouri

Atchison County, Missouri, is proposed for designation as a Medically Underserved Area. It is a rural county with an estimated population of 7,800 served by 2.9 FTE primary care physicians. The population of the county is aging, and two of its four physicians have reduced their practice hours due to age or infirmity. The values of the four basic medical underservice indicators are as follows for Atchison County:

Indicator	Percent/ rate/ratio	Weighted value
Population below poverty level (percent).....	12.8	18.7
Population age 65 and over (percent).....	20.4	9.8
Infant mortality rate.....	13.1	21.5
Primary care physician-to-population.....	.371	9.0
Total TMU score.....		59.0

Atchison County qualifies for MUA designation, based on its TMU score of 59.0, which is below the maximum value of 62.0 used to indicate underservice.

4. Nebraska—Furnas County

Furnas County, Nebraska, is proposed for designation as a Medically Underserved Area. It has an estimated population of 6,000 served by 3.0 FTE primary care physicians. This designation is requested in order to qualify Furnas County sites to apply for Rural Health Clinic certification. The values of the four basic medical underservice indicators are as follows for Furnas County:

Indicator	Percent/ rate/ratio	Weighted value
Population, below poverty level (percent).....	17.7	16.2
Population age 65 and over (percent).....	25.1	5.1
Infant mortality rate.....	9.1	24.8
Primary care physician-to-population ratio.....	0.50	12.6
Total IMU score.....		58.7

Furnas County qualifies for MUA designation, based on its IMU score of 58.7, which is below the maximum value of 62.0 used to indicate underservice.

5. South Carolina—Slater-Marietta Area

The Slater-Marietta service area of Greenville County, South Carolina (Census Tracts 24, 40, and 41), is proposed for designation as a Medically Underserved Area. The area has an estimated population of 15,893, and it has recently been designated as a primary medical care HMSA.

The values of the four basic medical underservice indicators are as follows for the Slater-Marietta area:

Indicator	Percent/ rate/ratio	Weighted value
Population below poverty level (percent).....	11.3	20.0
Population age 65 and over (percent).....	10.6	19.6
Infant mortality rate.....	13.3	21.5
Primary care physician-to-population ratio.....	0	0

Indicator	Percent/ rate/ratio	Weighted value
Total IMU score.....		61.1

The Slater-Marietta area qualifies for MUA designation, based on its IMU score of 61.1, which is below the maximum value of 62.0 used to indicate underservice.

6. South Dakota—Kingsbury County

Kingsbury County, South Dakota, is proposed for designation as a Medically Underserved Area. It has an estimated population of 6,300 served by 1.8 FTE primary care physicians, and it has recently been designated as a primary medical care HMSA. The values of the four basic medical underservice indicators are as follows for Kingsbury County:

Indicator	Percent/ rate/ratio	Weighted value
Population below poverty level (percent).....	20.1	13.6
Population age 65 and over (percent).....	22.4	8.0
Infant mortality rate.....	12.1	22.4
Primary care physician-to-population ratio.....	.286	5.7
Total IMU score.....		49.7

Kingsbury County qualifies for MUA designation, based on its IMU score of 54.7, which is below the maximum value of 62.0 used to indicate underservice.

7. Washington—Okanogan County

Okanogan County, Washington, is proposed for designation as a Medically Underserved Area. It has an adjusted population of 42,973 served by 19.0 FTE primary care physicians. It is currently classified as a primary medical care HMSA for migrant and seasonal farmworkers, and as a high impact migrant area. The values of the four basic medical underservice indicators are as follows for Okanogan County:

Indicator	Percent/ rate/ratio	Weighted value
Population below poverty level (percent).....	39.1	2.1
Population age 65 and over (percent).....	10.3	19.6
Infant mortality rate.....	11.2	23.2
Primary care physician-to-population ratio.....	.441	10.7
Total IMU score.....		55.6

Okanogan County qualifies for MUA designation, based on its IMU score of 55.6, which is below the maximum value of 62.0 used to indicate underservice.

The above data and MUP justifications have been reviewed by the Bureau of Health Care Delivery and Assistance through its Office of Shortage Designation, and are considered adequate to support the designations of the populations and areas listed, unless persuasive adverse comments are received as a result of publication of this notice.

Dated: April 2, 1990.

Robert G. Harmon,
Administrator.

[FR Doc. 90-8037 Filed 4-5-90; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

HIV Subacute Care Demonstration Projects

AGENCY: Health Resources and Services Administration, PHS, DHHS.

ACTION: Program announcement, proposed eligibility requirements and review and evaluation criteria.

SUMMARY: The Bureau of Maternal and Child Health and Resources Development (BMCHRD), Health Resources and Services Administration (HRSA), announces that Fiscal Year (FY) 1990 funds will be made available for up to three Subacute Care Demonstration Project Grants to entities providing subacute, medical and health care services to patients infected with the human immunodeficiency virus (HIV). The HRSA invites comments on the proposed eligibility requirements and review and evaluation criteria stated in this announcement. These comments will be considered in the development of the final notice of availability of funds to be published in the *Federal Register* in the Spring of 1990.

SUPPLEMENTARY INFORMATION:

Program Background and Objectives

The Health Omnibus Programs Extension of 1988, Public Law 100-607, added a new title XXIV to the Public Health Service Act. Section 2421 authorized the Secretary to conduct three Subacute Care Demonstration projects to determine:

- (1) The effectiveness and cost of providing subacute care services to patients infected with the HIV; and
- (2) The impact of such services on the health status of HIV-infected patients.

Under section 2421, the following terms of definitions apply:

- (1) The term "patients infected with the HIV" means persons who have a disease, or are recovering from a disease, attributable to the infection of

such a person with the HIV, and as the results of the effects of such disease, are in need of subacute care services.

(2) The term "subacute care" means medical health care services that are required for persons recovering from acute care episodes that are less intensive than the level of care provided by acute care hospitals, and includes skilled nursing care, hospice care, and other types of health services provided in other long-term care facilities.

The Subacute Care Demonstration projects will enable each grantee to provide care and treatment and to provide technical assistance to other facilities to meet the needs of HIV-infected persons. According to section 2421, a grantee must provide the following:

- (1) Subacute care;
- (2) Emergency medical care and specialized diagnostic and therapeutic services as needed and where appropriate, either directly or through affiliation with a hospital that has experience in treating patients that have developed AIDS;
- (3) Case management services to ensure appropriate discharge planning for patients;
- (4) Technical assistance to other facilities in the region directed toward education and training of physicians, nurses, and other health care professionals in the subacute care and treatment of HIV-infected patients; and
- (5) Research on AIDS, including (1) clinical research concentrating on neurological manifestations resulting from the HIV, and (2) the study of psychological and mental health issues related to AIDS.

A grantee may elect to include the following services:

- (1) Hospice services;
- (2) Outpatient care; and
- (3) Outreach activities in the surrounding community to hospitals and other health-care facilities serving HIV-infected patients.

Eligibility Requirements

The HRSA proposes the following eligibility requirements for entities considering making application. All public and private entities are eligible to apply, including State and local Governments and nonprofit and for-profit organizations providing or planning to provide subacute care services in the manner described above. Eligible entities must be located within the 15 Metropolitan Statistical Areas (MSAs) that have the highest AIDS cumulative incidence as reported to the Centers for Disease Control over a period of two years from November 1987 to October 1989. (See Appendix for a

listing of these MSAs.) In accordance with the section 2421 requirements, these areas are considered geographically diverse and have the highest incidence of AIDS cases.

It is further proposed that an entity which has the capacity to provide the required services, technical assistance, and research may apply, provided that it:

- (1) Meets one of the following organizational configurations: (a) A singular subacute care facility; (b) a group of subacute care facilities which together provide the range of subacute care services; (c) a hospital which has a dedicated unit/units providing or planning to provide subacute care services; or (d) an organization representing a coalition of public and private agencies which together provide a wide range of health and social services to HIV infected people; and

- (2) Demonstrates that it can structure its information and data collection such that the Secretary can perform a meaningful evaluation of the effectiveness, cost, and impact of subacute care services on the health status of patients infected with the HIV.

Availability of Funds

Approximately \$1.5 million is available in FY 1990 for up to three subacute Care Demonstration grants. The grants will be awarded competitively. Consistent with the statutory requirement the grant application must include a 4-year budget indicating how grant funds would be used each year of a 4-year project period. Continued funding for future budget periods is subject to the availability of funds. The Administration is not seeking funds for FY 1991.

Collaboration/Coordination With Other HIV Programs

It is proposed that the Subacute Care grantees document in their application the referral of patients and other collaborative efforts with HIV programs within their MSAs, such as the HRSA AIDS Service Demonstration Program; State Medicaid programs; the HRSA Pediatric AIDS Health Care Demonstration Projects; the HRSA AIDS Regional Education and Training Centers Program; the National Institute on Drug Abuse AIDS Community Outreach Demonstration Projects; the AIDS drug clinical trial studies and other research programs conducted by the National Institutes of Health; the Community Health Centers and Migrant Health Centers supported by HRSA; major private foundation supported

programs; and community-based AIDS service organizations.

Review and Evaluation Criteria

It is proposed that the Subacute Care applications undergo a two-phase review process. First, proposals would be reviewed and rated by an objective review committee and evaluated on the basis of the following review criteria:

—Appropriateness, quality, and innovation of the subacute care services offered;

—Demonstration of adequate financial resources to ensure the maintenance of financial viability over a 4-year project period;

—Demonstration of the adaptability of its subacute care services to reflect changes in treatment protocols and the demand for such services over a 4-year project period;

—Applicant's ability to structure a data and information system of its subacute care services to facilitate an evaluation of both the (1) effectiveness and cost of providing different subacute care services and (2) impact of such services on the health status of patients;

—Assurances that services will be made available to minority populations within the MSA;

—Demonstration of the program's ability to continue serving this population after the period of Federal assistance is completed as evidenced by the non-Federal funding sources used to support the project and the extent to which they increase during the four-year project period.

—Demonstrations of a research component on the clinical manifestations of neurological impairment and the psychosocial and mental health issues related to AIDS;

—Evidence of referrals and other collaboration and coordination with other HIV programs in the jurisdiction;

—Documentation of a strategy to provide technical assistance on subacute care and treatment of HIV-infected patients to other facilities in the MSA.

The second phase of the review would result in the recommendation by the same objective review committee of up to three projects from among those applications found to be "approvable." The review committee would use the following criteria for this determination:

—Demonstration of the greatest need for the proposed subacute care services over the 4-year project period;

—Assurance of geographically diverse project sites by allowing not more than one site in any State.

Comment Period

The public is invited to provide comments on the proposed eligibility requirements and review and evaluation criteria by May 7, 1990. In order to receive consideration, comments must be in writing and postmarked on or before the deadline date. Comments should be addressed to Mrs. Diane McMenamin, Chief, Community Development and Assistance Branch, Room 9A-05, 5600 Fishers Lane, Rockville, Maryland 20857. Questions regarding this notice may be directed to Mrs. McMenamin at 301 443-6745.

Executive Order 12372

The AIDS Service Demonstration Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intragovernmental review of Federal programs, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application package under this notice will contain a listing of States which have chosen to set up such a review and will provide a point of contact in the States for the review. Applicants should promptly contact their State single point of contact (SPOC) and follow their instructions prior to the submission of an application. The SPOC has 60 days after the application deadline date to submit its review comments.

The OMB Catalog of Federal Domestic Assistance number for the Subacute Care Demonstration Project Grants has been requested.

Dated: January 24, 1990.

John H. Kelso,
Acting Administrator.

Metropolitan statistical area	November 1987- October 1989 cumulative incidence
1. New York, NY.....	11063
2. Los Angeles, CA.....	4237
3. San Francisco, CA.....	3669
4. Newark, NJ.....	2105
5. Houston, TX.....	1868
6. Chicago, IL.....	1776
7. Washington, DC.....	1664
8. Miami, FL.....	1526
9. Philadelphia, PA.....	1501
10. San Juan, PR.....	1454
11. Atlanta, GA.....	1430
12. Dallas, TX.....	1141
13. Boston, MA.....	1132
14. Fort Lauderdale, FL.....	938
15. San Diego, CA.....	918

[FR Doc. 90-7960 Filed 4-5-90; 8:45 am]

BILLING CODE 4160-15-M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, March 30, 1990.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Petitions for Affirmation of Generally Recognized as Safe (GRAS) Substances—0910-0132—section 201(s) of the FD&C Act defines food ingredients other than food additives as substances generally recognized as safe (GRAS). Under Authority of sections 409 and 701 of the Act, the FDA reviews petitions for affirmation as GRAS which are submitted on a voluntary basis for the food industry and other interested parties. *Respondents:* Businesses or other for-profit, Federal agencies or employees, small businesses or organizations; *Number of Respondents:* 10; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 2,500 hours; *Estimated Annual Burden:* 25,000 hours.

2. Citizen Petition (21 CFR 10.30)—0910-0183—The information collection contained in this regulation sets forth procedures and format for preparation and submission of a citizen petition requesting the Commissioner of Food and Drugs to establish, amend, or revoke a regulation or order or to take or refrain from taking any other administrative action. *Respondents:* Individuals or households, State or local governments, businesses or other for-profit, non-profit institutions, small businesses or organizations; *Number of Respondents:* 120; *Number of Responses per Respondent:* 1; *Average Burden per Response:* 12 hours; *Estimated Annual Burden:* 1,400 hours.

3. Annual Space Utilization and Enrollment Report for Nursing and Health Professions—0915-0056—The construction assistance programs for nursing and health professions schools use this form to monitor space utilization in the portion of the teaching facility which received Federal assistance. Annual enrollment reports are required of the nursing schools, although they are no longer required of the health professions schools. *Respondents:* State or local governments, non-profit institutions.

	No. of respond- ents	No. of hours per re- sponse	No. of re- sponses per respond- ent
Facilities not reporting enrollment Forms 900-1 and 900-2.....	454	1.0	1
Facilities reporting enrollment Form 900-1.....	9	1.5	1

Estimated annual burden—468 Hours.

4. Tea Chop List and Appellant's Application for Review of Examiner's Return—0910-0259—Importers of tea or merchandise described as tea are required by the Board of Tea Experts to submit samples for examination to determine compliance with prescribed standards of purity, quality, and fitness for consumption before being allowed entry into the United States. Tea samples which have been rejected are reviewed upon request by the appellant. *Respondents:* Businesses or other for-profit; *Number of Respondents:* 150; *Number of Responses per Respondent:* 30; *Average Burden per Response:* 0.25 hours; *Estimated Annual Burden:* 1,125 hours.

5. Application for Training—0920-0017—CDC provides training to employees of hospitals, universities, laboratories and other health professionals. The trainee applies for instruction on an "Application for Training." This application is used to apply for CDC conducted training in laboratory procedures and current prevention and control techniques of infectious diseases and immunization procedures. *Respondents:* Individuals or households; *Number of Respondents:* 11,310; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .167 hours; *Estimated Annual Burden:* 1,886 hours.

6. Premarket Approval of Medical Devices—0910-0231—The PMA Regulation describes the contents of a premarket approval application, (PMA) for a medical device. The FDA requires this information from medical device manufacturers in order to approve for marketing, devices shown to be safe and effective, or disapprove devices not shown to be so. *Respondents:* Businesses or other for-profit, small businesses or organizations.

	No. of respond- ents	No. of hours per re- sponse	No. of re- sponses per respond- ent
<i>Reporting</i>			
Premarket approval of medical devices 21 CFR 814.15, 20, 37, 39, 82 and 84.....	800	670	1
<i>Recordkeeping</i>			
Premarket approval of medical devices 21 CFR 814.15, 20, 37, 39, 82 and 84.....	100	16.7	1

Estimated annual burden—537,670 Hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address:

Human Resources and Housing Branch,
New Executive Office Building, Room
3002, Washington, DC 20503

Dated: April 2, 1990.

James M. Friedman,
Acting Deputy Assistant Secretary for Health
(Planning and Evaluation).

[FR Doc. 90-7975 Filed 4-5-90; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-90-1917; FR-2606-N-66]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant
Secretary for Community Planning and
Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies
unutilized and underutilized Federal
property determined by HUD to be
suitable for possible use for facilities to
assist the homeless.

EFFECTIVE DATE: April 6, 1990.

ADDRESSES: For further information,
contact James Forsberg, Room 7262,
Department of Housing and Urban
Development, 451 Seventh Street SW,
Washington, DC 20410; telephone (202)

755-6300; TDD number for the hearing-
and speech-impaired (202) 755-5965.
(These telephone numbers are not toll-
free.)

SUPPLEMENTARY INFORMATION: In
accordance with the December 12, 1988
Court Order in *National Coalition for
the Homeless v. Veterans
Administration*, No. 88-2503-OG
(D.D.C.), HUD is publishing this Notice
to identify Federal buildings and real
property that HUD has determined are
suitable for use for facilities to assist the
homeless. The properties were identified
from information provided to HUD by
Federal landholding agencies regarding
unutilized and underutilized buildings
and real property controlled by such
agencies or by GSA regarding its
inventory of excess or surplus Federal
property.

The Order requires HUD to take
certain steps to implement section 501 of
the Stewart B. McKinney Homeless
Assistance Act (42 U.S.C. 11411), which
sets out a process by which unutilized or
underutilized Federal properties may be
made available to the homeless. Under
section 501(a), HUD is to collect
information from Federal landholding
agencies about such properties and then
to determine, under criteria developed in
consultation with the Department of
Health and Human Services (HHS) and
the Administrator of General Services
(GSA), which of those properties are
suitable for facilities to assist the
homeless. The Order requires HUD to
publish, on a weekly basis, a Notice in
the *Federal Register* identifying the
properties determined as suitable.

The properties identified in this
Notice may ultimately be available for
use by the homeless, but they are first
subject to review by the landholding
agencies pursuant to the court's
Memorandum of December 14, 1988 and
section 501(b) of the McKinney Act.
Section 501(b) requires HUD to notify
each Federal agency about any property
of such agency that has been identified
as suitable. Within 30 days from receipt
of such notice from HUD, the agency
must transmit to HUD: (1) Its intention
to declare the property excess to the
agency's need or to make the property
available on an interim basis for use as
facilities to assist the homeless; or (2) a
statement of the reasons that the
property cannot be declared excess or
made available on an interim basis for
use as facilities to assist the homeless.

First, if the landholding agency
decides that the property cannot be
declared excess or made available to
the homeless for use on an interim basis
the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, Room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 30 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's Federal Register Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses:

U.S. Army: HQ-DA, Attn: DAEN-ZCI-P-Robert Conte; Room 1E671
Pentagon, Washington, DC 20360-2600; (202) 693-4583;
Corps of Engineers: Bob Swieconeck, HQ-US Army Corps of Engineers, Attn: CERE-MN; 20 Massachusetts Avenue NW, Washington, DC 20415-1000; (202) 722-1750;
U.S. Navy: John Carr, Code 2041C, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332; (202) 325-0474;
U.S. Air Force: H. L. Lovejoy, Bolling AFB, HQ-USAF/LEER, Washington, DC 20332-5000; (202) 767-4191;
Veterans Administration: Linda Tribby, 084A, Real Property Program Management, Veterans Administration, 810 Vermont Ave. NW, Washington, DC 20420; (202) 233-5026;
Dept. of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW, Room 10319D, Washington, DC 20590; (202) 366-4246.

(These are not toll-free numbers.)

Dated: March 30, 1990.

Paul Roitman Bardack,
Deputy Assistant Secretary for Program
Policy Development and Evaluation.

Suitable Land (by State)

California

Land
VA Medical Center
Wilshire and Sawtelle Boulevards
Los Angeles, CA, Co: Los Angeles
Landholding Agency: VA.
Property Number: 979010077
Status: Underutilized
Comment: Approximately 30 acres of 80 acre tract; 7 acre portion contaminated; portions may be environmentally protected.

Georgia

Naval Submarine Base
Grid AA-1 to AA-4 to EE-7 to FF-2
Kings Bay, GA, Co: Camden
Landholding Agency: Navy
Property Number: 779010255
Status: Underutilized
Comment: 495 acres; 86 acre portion located in floodway; secured area with alternate access.

E. O. Tract A
J. Strom Thurmond Dam and Reservoir
(See County), GA, Co: Columbia
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011516
Status: Unutilized
Comment: 17 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract B
J. Strom Thurmond Dam and Reservoir
(See County), GA, Co: Columbia
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011517
Status: Unutilized
Comment: 88 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract D
J. Strom Thurmond Dam and Reservoir
(See County), GA, Co: Lincoln
Location: Northwest of Forest Lake Estates on Dozier Branch.
Landholding Agency: COE
Property Number: 319011518
Status: Unutilized
Comment: 7 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract F
J. Strom Thurmond Dam and Reservoir
(See County), GA, Co: Columbia
Location: Approximately 2 miles east of GA 104 and Keg Creek Road intersection.
Landholding Agency: COE
Property Number: 319011519
Status: Unutilized
Comment: 29 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract E
J. Strom Thurmond Dam and Reservoir
(See County), GA, Co: Columbia
Location: Approximately 1½ miles east of GA 104 and Keg Creek

Road Intersection.
Landholding Agency: COE
Property Number: 319011520
Status: Unutilized
Comment: 12 acres; potential utilities; most recent use—forest reserve and wildlife management.

E. O. Tract G
J. Strom Thurmond Dam and Reservoir
(See County), GA, Co: Columbia
Location: 4 miles east of GA 104 and Ridge Road Intersection.
Landholding Agency: COE
Property Number: 319011521
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract H
J. Strom Thurmond Dam and Reservoir
(See County), GA, Co: Columbia
Location: 4 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011522
Status: Unutilized
Comment: 7 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract I
J. Strom Thurmond Dam and Reservoir
(See County), GA, Co: Columbia
Location: 4 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011523
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

Missouri

Jefferson Barracks Division
VA Medical Center
I-255 and Koch Road
St. Louis, MO, Co: St. Louis
Landholding Agency: VA
Property Number: 979010078
Status: Unutilized
Comment: 4 acres; has sink holes and property borders ridge above Mississippi River.

Table Rock Lake
Kings River
Branson, MO, Co: Stone
Location: Western shore of Kings River arm of Lake.
Landholding Agency: COE
Property Number: 319011534
Status: Underutilized
Comment: 38 acres; no utilities; most recent use—recreation.

North Dakota

Land
VA Medical Center
12th St. and 9th Avenue N.W.
Minot, ND, Co: Ward
Landholding Agency: VA
Property Number: 979010072
Status: Unutilized
Comment: 20.6 acres; partially paved roads and parking lot.

Oklahoma

Parcel No. 1
Tenkiller Ferry Lake
Section 5 and 6

(See County), OK, Co: Sequoyah
Landholding Agency: COE
Property Number: 319011299
Status: Underutilized
Comment: 28 acres; portion of land is Bald Eagle Habitat; most recent use—recreation.

Parcel No. 2
Tenkiller Ferry Lake
Section 32 and 33
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011300
Status: Underutilized
Comment: 50 acres; portion of land is Bald Eagle Habitat; most recent use—recreation.

Parcel No. 3
Tenkiller Ferry Lake
Section 3, T13N, R22E
(See County), OK, Co: Sequoyah
Landholding Agency: COE
Property Number: 319011301
Status: Excess
Comment: 16 acres; portion of land is Bald Eagle Habitat; most recent use—recreation and development.

Parcel No. 4
Tenkiller Ferry Lake
Section 28, T14N, R22E
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011302
Status: Underutilized
Comment: 47 acres; portion of land is Bald Eagle Habitat; most recent use—recreation.

Parcel No. 6
Tenkiller Ferry Lake
Section 22, T14N, R22E
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011303
Status: Underutilized
Comment: 40 acres; portion of land is Bald Eagle Habitat; most recent use—recreation.

Parcel No. 7
Tenkiller Ferry Lake
Section 27
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011304
Status: Underutilized
Comment: 21 acres; portion of land is Bald Eagle Habitat; most recent use—recreation.

Parcel No. 8
Tenkiller Ferry Lake
Section 4 and 15
(See County), OK, Co: Sequoyah
Landholding Agency: COE
Property Number: 319011305
Status: Excess
Comment: 34 acres; most recent use—recreation and development.

Parcel No. 9
Tenkiller Ferry Lake
Section 14 and 23
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011306
Status: Underutilized
Comment: 17 acres; portion of land is Bald Eagle Habitat; most recent use—recreation.

Parcel No. 10
Tenkiller Ferry Lake
Section 10
(See County), OK, Co: Cherokee

Landholding Agency: COE
Property Number: 319011307
Status: Underutilized
Comment: 11 acres; portion of land is Bald Eagle Habitat; most recent use—recreation.

Parcel No. 11
Tenkiller Ferry Lake
Section 10
(See County), OK, Co: Sequoyah
Landholding Agency: COE
Property Number: 319011308
Status: Excess
Comment: 5 acres; most recent use—recreation and pasture.

Parcel No. 12
Tenkiller Ferry Lake
Section 2
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011309
Status: Excess
Comment: 20 acres; portion of land is Bald Eagle Habitat; most recent use—recreation and development.

Parcel No. 26
Tenkiller Ferry Lake
Section 10
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011310
Status: Underutilized
Comment: 18 acres; potential utilities; most recent use—recreation.

Parcel No. 27
Tenkiller Ferry Lake
Section 17
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011311
Status: Underutilized
Comment: 19 acres; steep and wooded; potential utilities; most recent use—recreation.

Parcel No. 28
Tenkiller Ferry Lake
Section 5
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011312
Status: Excess
Comment: 15 acres; potential utilities; most recent use—recreation and development.

Parcel No. 29
Tenkiller Ferry Lake
Section 6
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011313
Status: Unutilized
Comment: 30.5 acres; potential utilities; most recent use recreation and development.

Parcel No. 30
Tenkiller Ferry Lake
Section 30
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011314
Status: Underutilized
Comment: 20 acres; potential utilities; most recent use—recreation.

Parcel No. 31
Tenkiller Ferry Lake
Section 8
(See County), OK, Co: Cherokee
Landholding Agency: COE

Property Number: 319011315
Status: Underutilized
Comment: 75 acres; potential utilities; most recent use—recreation.

Parcel No. 32
Tenkiller Ferry Lake
Section 8
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011316
Status: Underutilized
Comment: 12 acres; potential utilities; most recent use—recreation.

Parcel No. 33
Tenkiller Ferry Lake
Section 8
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011317
Status: Underutilized
Comment: 5 acres; potential utilities; most recent use—recreation.

Parcel No. 34
Tenkiller Ferry Lake
Section 2
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011318
Status: Unutilized
Comment: 13 acres; potential utilities; most recent use—recreation and development.

Parcel No. 35
Tenkiller Ferry Lake
Section 1
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011319
Status: Unutilized
Comment: 25 acres; potential utilities; most recent use—recreation.

Parcel No. 36
Tenkiller Ferry Lake
Section 2 and 3
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011320
Status: Unutilized
Comment: 38.25 acres; potential utilities; most recent use recreation.

Parcel No. 37
Tenkiller Ferry Lake
Section 1
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011321
Status: Underutilized
Comment: 9 acres; potential utilities; most recent use—recreation.

Parcel No. 38
Tenkiller Ferry Lake
Section 1
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011322
Status: Underutilized
Comment: 75 acres; potential utilities; most recent use—recreation.

Parcel No. 39
Tenkiller Ferry Lake
Section 24
(See County), OK, Co: Cherokee
Landholding Agency: COE
Property Number: 319011323
Status: Unutilized

Comment: 12 acres; potential utilities; most recent use—recreation.

Parcel No. 40

Tenkiller Ferry Lake

Section 24

(See County), OK, Co: Cherokee

Location: Approximately 2 miles east of Pettit, OK.

Landholding Agency: COE

Property Number: 319011324

Status: Underutilized

Comment: 38 acres; heavily wooded; potential utilities; most recent use—recreation.

Parcel No. 41

Tenkiller Ferry Lake

Section 14

(See County), OK, Co: Cherokee

Location: Approximately 1½ miles northeast of Pettit, OK.

Landholding Agency: COE

Property Number: 319011325

Status: Unutilized

Comment: 10.31 acres; sloping and heavily wooded; potential utilities.

Parcel No. 42

Tenkiller Ferry Lake

Section 23

(See County), OK, Co: Cherokee

Location: Approximately 1½ miles east of Pettit, OK.

Landholding Agency: COE

Property Number: 319011326

Status: Unutilized

Comment: 1.05 acres; heavily wooded; potential utilities; most recent use—recreation.

Parcel No. 43

Tenkiller Ferry Lake

Section 23

(See County), OK, Co: Cherokee

Location: Approximately 1½ miles east of Pettit, OK.

Landholding Agency: COE

Property Number: 319011327

Status: Unutilized

Comment: 10.04 acres; potential utilities; most recent use—recreation.

Parcel No. 44

Tenkiller Ferry Lake

Section 26

(See County), OK, Co: Cherokee

Location: Approximately 2 miles southeast of Pettit, OK.

Landholding Agency: COE

Property Number: 319011328

Status: Unutilized

Comment: 14 acres; potential utilities; most recent use—recreation.

Parcel No. 45

Tenkiller Ferry Lake

Section 21

(See County), OK, Co: Cherokee

Location: Approximately ½ mile southeast of Pettit, OK.

Landholding Agency: COE

Property Number: 319011329

Status: Unutilized

Comment: 21.43 acres; potential utilities; most recent use—recreation.

Parcel No. 46

Tenkiller Ferry Lake

Section 9

(See County), OK, Co: Cherokee

Location: Approximately 3½ miles south of Pettit, OK.

Landholding Agency: COE

Property Number: 319011330

Status: Underutilized

Comment: 20 acres; rocky and wooded; potential utilities; most recent use—recreation.

Parcel No. 47

Tenkiller Ferry Lake

Section 3

(See County), OK, Co: Cherokee

Location: Approximately 3½ miles south of Pettit, OK.

Landholding Agency: COE

Property Number: 319011331

Status: Underutilized

Comment: 20 acres; heavily wooded; potential utilities; most recent use—recreation.

Parcel No. 48

Tenkiller Ferry Lake

Section 4

(See County), OK, Co: Cherokee

Location: Approximately 4 miles south of Pettit, OK.

Landholding Agency: COE

Property Number: 319011332

Status: Underutilized

Comment: 20 acres; slightly wooded; potential utilities; most recent use—recreation.

Parcel No. 1

Lake Texoma

Section 9

Cartwright, OK, Co: Bryan

Location: Approximately 1¼ miles north and ¾ mile west of Cartwright, OK.

Landholding Agency: COE

Property Number: 319011333

Status: Underutilized

Comment: 10 acres; flat mostly open land; potential utilities; most recent use—recreation.

Parcel No. 2

Lake Texoma

Section 10

Cartwright, OK, Co: Bryan

Location: Approximately 1.75 miles north of Cartwright, OK.

Landholding Agency: COE

Property Number: 319011334

Status: Unutilized

Comment: 10.01 acres; sloping and wooded; potential utilities; most recent use—recreation.

Parcel No. 3

Lake Texoma

Section 34

(See County), OK, Co: Bryan

Location: Approximately 2½ miles west-southwest of Platter Flats, OK.

Landholding Agency: COE

Property Number: 319011335

Status: Underutilized

Comment: 28 acres; sloping and wooded; potential utilities; most recent use—recreation.

Parcel No. 4

Lake Texoma

Section 34

(See County), OK, Co: Bryan

Location: Approximately 1¼ miles west of Platter Flats, OK.

Landholding Agency: COE

Property Number: 319011336

Status: Underutilized

Comment: 8.5 acres; flat and open land; potential utilities; most recent use—recreation.

Parcel No. 5

Lake Texoma

Section 26

(See County), OK, Co: Bryan

Location: Approximately 1 mile northwest of Platter Flats, OK.

Landholding Agency: COE

Property Number: 319011337

Status: Underutilized

Comment: 40 acres; potential utilities; most recent use—recreation.

Parcel No. 6

Lake Texoma

Section 24

(See County), OK, Co: Bryan

Location: Approximately 1½ miles north of Platter Flats, OK.

Landholding Agency: COE

Property Number: 319011338

Status: Underutilized

Comment: 24 acres; rolling and heavily wooded; potential utilities; most recent use—recreation.

Parcel No. 7

Lake Texoma

(See County), OK, Co: Bryan

Location: Approximately 2 miles north of Platter Flats, OK.

Landholding Agency: COE

Property Number: 319011339

Status: Underutilized

Comment: 50 acres; rolling and wooded; potential utilities; most recent use—recreation.

Parcel No. 8

Lake Texoma

Section 13

(See County), OK, Co: Bryan

Location: Approximately 3 miles northeast of Platter Flats, OK.

Landholding Agency: COE

Property Number: 319011340

Status: Underutilized

Comment: 10 acres; potential utilities; most recent use—recreation.

Parcel No. 9

Lake Texoma

Section 13 T7S, R7E

(See County), OK, Co: Bryan

Location: Approximately 3½ miles northeast of Platter Flats, OK.

Section T7S, R8E.

Landholding Agency: COE

Property Number: 319011341

Status: Underutilized

Comment: 40 acres; no utilities; most recent use—recreation.

Parcel No. 10

Lake Texoma

Section 18

(See County), OK, Co: Bryan

Location: Section T7S, R8E approximately 4 miles northeast of Platter Flats, OK.

Landholding Agency: COE

Property Number: 319011342

Status: Underutilized

Comment: 43 acres; most recent use—recreation.

Parcel No. 11

Lake Texoma
Section 7, T7S, R8E
(See County), OK, Co: Bryan
Location: Approximately 4½ miles northeast of Platter Flats, OK.

Landholding Agency: COE
Property Number: 319011343
Status: Underutilized
Comment: 43 acres; no utilities; most recent use—recreation.

Parcel No. 12
Lake Texoma
Section 6 and 7, T7S, R8E
(See County), OK, Co: Bryan
Location: Approximately 2 miles south of Mead, OK.

Landholding Agency: COE
Property Number: 319011344
Status: Underutilized
Comment: 13 acres; no utilities; most recent use—recreation.

Parcel No. 13
Lake Texoma
Section 7, T7S, R8E
(See County), OK, Co: Bryan
Location: Approximately 2 miles south of Mead, OK.

Landholding Agency: COE
Property Number: 319011345
Status: Underutilized
Comment: 26.76 acres; no utilities; most recent use—recreation.

Parcel No. 14
Lake Texoma
Section 12, T7S, R7E
(See County), OK, Co: Bryan
Location: Approximately 3½ miles southwest of Mead, OK.

Landholding Agency: COE
Property Number: 319011346
Status: Underutilized
Comment: 6 acres; no utilities; most recent use—recreation.

Parcel No. 15
Lake Texoma
Section 13, T7S, R7E
(See County), OK, Co: Bryan
Location: Approximately 3½ miles southwest of Mead, OK.

Landholding Agency: COE
Property Number: 319011347
Status: Underutilized
Comment: 5 acres; most recent use—recreation.

Parcel No. 16
Lake Texoma
Section 11, T7S, R7E
(See County), OK, Co: Bryan
Location: Approximately 4½ miles southwest of Mead, OK.

Landholding Agency: COE
Property Number: 319011348
Status: Underutilized
Comment: 27 acres; most recent use—recreation.

Parcel No. 18
Lake Texoma
Section 10, T7S, R7E
(See County), OK, Co: Bryan
Location: Approximately 6 miles southwest of Mead, OK.

Landholding Agency: COE
Property Number: 319011349
Status: Underutilized
Comment: 3 acres; most recent use—recreation.

Parcel No. 19
Lake Texoma
Section 9 and 16, T7S, R7E
(See County), OK, Co: Bryan
Location: Approximately 7 miles southwest of Mead, OK.

Landholding Agency: COE
Property Number: 319011350
Status: Underutilized
Comment: 7 acres; most recent use—recreation.

Parcel No. 20
Lake Texoma
Section 9
(See County), OK, Co: Bryan
Location: Approximately 7 miles southwest of Mead, OK.

Landholding Agency: COE
Property Number: 319011351
Status: Underutilized
Comment: 9 acres; potential utilities; most recent use—recreation.

Parcel No. 21
Lake Texoma
Section 3 T7S, R7E
(See County), OK, Co: Bryan
Location: Approximately 5 miles southwest of Mead, OK.

Landholding Agency: COE
Property Number: 319011352
Status: Underutilized
Comment: 41.16 acres; most recent use—recreation.

Parcel No. 22
Lake Texoma
Section 3, T7S, R7E
(See County), OK, Co: Bryan
Location: Approximately 5 miles southwest of Mead, OK.

Landholding Agency: COE
Property Number: 319011353
Status: Underutilized
Comment: 26.4 acres; most recent use—recreation.

Parcel No. 23
Lake Texoma
Section 34, T7S, R7E
(See County), OK, Co: Bryan
Location: Approximately 3½ miles west of Mead, OK.

Landholding Agency: COE
Property Number: 319011354
Status: Underutilized
Comment: 9 acres; no utilities; most recent use—recreation.

Parcel No. 24
Lake Texoma
Section 34, T6S, R7E
(See County), OK, Co: Bryan
Location: Approximately 3 miles west of Mead, OK.

Landholding Agency: COE
Property Number: 319011355
Status: Underutilized
Comment: 9 acres; no utilities; most recent use—recreation.

Parcel No. 25
Lake Texoma
Section 28, T7S, R6E
(See County), OK, Co: Bryan
Location: Approximately 5 miles west of Mead, OK.

Landholding Agency: COE
Property Number: 319011356
Status: Underutilized

Comment: 10 acres; no utilities; most recent use—recreation.

Parcel No. 26
Lake Texoma
Section 26, T6S, R7E
(See County), OK, Co: Bryan
Location: Approximately 1½ miles west of Mead, OK.

Landholding Agency: COE
Property Number: 319011357
Status: Underutilized
Comment: 9 acres; no utilities; most recent use—recreation.

Parcel No. 27
Lake Texoma
Section 14 and 23, T6S, R7E
(See County), OK, Co: Bryan
Location: Approximately 2½ miles west of Mead, OK.

Landholding Agency: COE
Property Number: 319011358
Status: Underutilized
Comment: 17 acres; no utilities; most recent use—recreation.

Parcel No. 28
Lake Texoma
Section 14, T6S, R7E
(See County), OK, Co: Bryan
Location: Approximately 2½ miles west of Mead, OK.

Landholding Agency: COE
Property Number: 319011359
Status: Underutilized
Comment: 6 acres; no utilities; most recent use—recreation.

Parcel No. 29
Lake Texoma
Section 23, T6S, R7E
(See County), OK, Co: Bryan
Location: Approximately 3 miles west of Mead, OK.

Landholding Agency: COE
Property Number: 319011360
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—recreation.

Parcel No. 30
Lake Texoma
Section 15 and Section 22, T6S, R7E
(See County), OK, Co: Bryan
Location: Approximately 3 miles northwest of Mead, OK.

Landholding Agency: COE
Property Number: 319011361
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—recreation.

Parcel No. 31
Lake Texoma
Section 22, T6S, R7E
(See County), OK, Co: Bryan
Location: Approximately 3 miles northwest of Mead, OK.

Landholding Agency: COE
Property Number: 319011362
Status: Underutilized
Comment: 11 acres; no utilities; most recent use—recreation.

Parcel No. 32
Lake Texoma
Section 15, T6S, R7E
(See County), OK, Co: Bryan
Location: Approximately 3½ miles northwest of Mead, OK.

Landholding Agency: COE
 Property Number: 319011363
 Status: Underutilized
Comment: 18 acres; no utilities; most recent use—recreation.

Parcel No. 33
 Lake Texoma
 Section 12, T6S, R7E
 (See County), OK, Co: Bryan
 Location: Approximately 4 miles northwest of Mead, OK.
 Landholding Agency: COE
 Property Number: 319011364
 Status: Underutilized
Comment: 15 acres; no utilities; most recent use—recreation.

Parcel No. 73
 Lake Texoma
 Section 8
 (See County), OK, Co: Marshall
 Location: Approximately 2½ miles east of New Woodville, OK.
 Landholding Agency: COE
 Property Number: 319011365
 Status: Underutilized
Comment: 9 acres; most recent use—recreation.

Parcel No. 74
 Lake Texoma
 Section 7
 (See County), OK, Co: Marshall
 Location: Approximately 2¼ miles east of New Woodville, OK.
 Landholding Agency: COE
 Property Number: 319011366
 Status: Underutilized
Comment: 19 acres; most recent use—recreation.

Parcel No. 75
 Lake Texoma
 Section 7
 (See County), OK, Co: Marshall
 Location: Approximately 2 miles east of New Woodville, OK.
 Landholding Agency: COE
 Property Number: 319011367
 Status: Underutilized
Comment: 15 acres; most recent use—recreation.

Parcel No. 76
 Lake Texoma
 Section 76
 (See County), OK, Co: Marshall
 Location: Approximately 2 miles east of New Woodville, OK.
 Landholding Agency: COE
 Property Number: 319011368
 Status: Underutilized
Comment: 8 acres; most recent use—recreation.

Parcel No. 77
 Lake Texoma
 Section 17, 18, 19 and 20
 (See County), OK, Co: Marshall
 Location: Approximately 2½ miles southeast of New Woodville, OK.
 Landholding Agency: COE
 Property Number: 319011369
 Status: Underutilized
Comment: 270 acres; subject to grazing lease; most recent use grazing.

Parcel No. 42
 Fort Gibson Lake
 Section 11
 (See County), OK, Co: Mayes

Landholding Agency: COE
 Property Number: 319011370
 Status: Underutilized
Comment: 15 acres; subject to grazing lease; potential utilities.

Parcel No. 43
 Fort Gibson Lake
 Section 11
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011371
 Status: Underutilized
Comment: 125 acres; potential utilities; portion subject to grazing lease and flowage easements.

Parcel No. 44
 Fort Gibson Lake
 Section 11
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011372
 Status: Underutilized
Comment: 17 acres; potential utilities; portion subject to grazing lease; most recent use—recreation.

Parcel No. 45
 Fort Gibson Lake
 Section 3
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011373
 Status: Underutilized
Comment: 30 acres; potential utilities; portion subject to grazing lease; most recent use—recreation.

Parcel No. 46
 Fort Gibson Lake
 Section 29
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011374
 Status: Underutilized
Comment: 1555 acres; potential utilities; portions subject to haying and grazing lease.

Parcel No. 47
 Fort Gibson Lake
 Section 3 and 10
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011375
 Status: Underutilized
Comment: 15 acres; potential utilities; portion subject to grazing lease; most recent use—recreation.

Parcel No. 48
 Fort Gibson Lake
 Section 10
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011376
 Status: Underutilized
Comment: 38 acres; potential utilities; portion subject to grazing lease; most recent use—recreation.

Parcel No. 49
 Fort Gibson Lake
 Section 15
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011377
 Status: Excess
Comment: 26.94 acres; potential utilities; portion subject to grazing lease and flowage easements.

Parcel No. 50
 Fort Gibson Lake
 Section 22 and 27
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011378
 Status: Underutilized
Comment: 55 acres; potential utilities; most recent use—recreation.

Parcel No. 51
 Fort Gibson Lake
 Section 27
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011379
 Status: Excess
Comment: 35.38 acres; potential utilities; subject to flowage easement; portion environmentally protected.

Parcel No. 53
 Fort Gibson Lake
 Section 20 and 29
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011381
 Status: Underutilized
Comment: 32 acres; potential utilities; most recent use—recreation.

Parcel 54
 Fort Gibson Lake
 Section 20
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011382
 Status: Underutilized
Comment: 12 acres; potential utilities.

Parcel No. 55
 Fort Gibson Lake
 Section 20
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011383
 Status: Underutilized
Comment: 10 acres; potential utilities; most recent use—recreation.

Parcel No. 56
 Fort Gibson Lake
 Section 17
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011384
 Status: Underutilized
Comment: 30 acres; potential utilities; portion subject to haying lease.

Parcel No. 57
 Fort Gibson Lake
 Section 18
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011385
 Status: Underutilized
Comment: 35 acres; potential utilities; portion subject to haying lease.

Parcel No. 58
 Fort Gibson Lake
 Section 18
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011386
 Status: Underutilized
Comment: 18 acres; potential utilities; portion subject to haying lease; most recent use—recreation.

Parcel No. 59

Fort Gibson Lake
Section 12 and 59
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319011387
Status: Underutilized
Comment: 10 acres; potential utilities; portion subject to haying lease.

Parcel No. 60
Fort Gibson Lake
Section 12
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319011388
Status: Underutilized
Comment: 10 acres; potential utilities; most recent use—recreation.

Parcel No. 61
Fort Gibson Lake
Section 13
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319011389
Status: Excess
Comment: 54 acres; potential utilities; subject to flowage easement; most recent use—recreation.

Parcel No. 62
Fort Gibson Lake
Section 22
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319011390
Status: Underutilized
Comment: 12 acres; potential utilities; most recent use—recreation.

Parcel No. 64
Fort Gibson Lake
Section 20 and 29
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319011392
Status: Underutilized
Comment: 43 acres; potential utilities; most recent use—recreation.

Parcel No. 65
Fort Gibson Lake
Section 29
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319011393
Status: Excess
Comment: 12 acres; potential utilities; portion subject to flowage easement; portion environmentally protected.

Parcel No. 66
Fort Gibson Lake
Section 32
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319011394
Status: Underutilized
Comment: 25 acres; potential utilities; portion subject to grazing lease; most recent use—recreation.

Parcel No. 67
Fort Gibson Lake
Section 6
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319011395
Status: Underutilized
Comment: 10 acres; potential utilities; subject to grazing lease.

Parcel No. 68

Fort Gibson Lake
Section 2
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319011396
Status: Underutilized
Comment: 8.5 acres; potential utilities; subject to grazing lease.

Parcel No. 69
Fort Gibson Lake
Section 2 and 3
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319011397
Status: Excess
Comment: 70 acres; potential utilities; subject to grazing lease and flowage easements.

Parcel No. 70
Fort Gibson Lake
Section 10
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319011398
Status: Underutilized
Comment: 315 acres; potential utilities; most recent use—recreation

Parcel No. 71
Fort Gibson Lake
Section 23
(See County), OK, Co: Mayes
Landholding Agency: COE
Property Number: 319011399
Status: Excess
Comment: 360 acres; potential utilities; subject to hay and grazing leases; flowage easement.

Parcel No. 99
Fort Gibson Lake
Section 21
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319011400
Status: Excess
Comment: 5 acres; small creek on land; most recent use—recreation.

Parcel No. 100
Fort Gibson Lake
Section 20
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319011401
Status: Excess
Comment: 20 acres; portion is environmentally protected; most recent use—recreation.

Parcel No. 101
Fort Gibson Lake
Section 21
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319011402
Status: Underutilized
Comment: 43 acres; most recent use—recreation.

Parcel No. 102
Fort Gibson Lake
Section 33
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319011403
Status: Excess
Comment: 7 acres; subject to grazing lease; most recent use—recreation.

Parcel No. 103

Fort Gibson Lake
Section 9 T16N, R19E
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319011404
Status: Underutilized
Comment: 19 acres; most recent use—recreation.

Parcel No. 104
Fort Gibson Lake
Section 9 and 16
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319011405
Status: Underutilized
Comment: 52 acres; subject to haying/grazing leases; most recent use—recreation.

Parcel No. 105
Fort Gibson Lake
Section 14, 22 and 23
(See County), OK, Co: Wagoner
Landholding Agency: COE
Property Number: 319011406
Status: Underutilized
Comment: 375 acres; portion is environmentally protected; most recent use—recreation.

Pennsylvania

C.E. Kelly Support Facility
Finley Area Site 52, Land
Private Road
Finleyville, PA, Co: Washington
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE
Property Number: 319011408
Status: Excess
Base Closure
Comment: 11.63 acres; potential utilities; most recent use—playground area; scheduled to be vacated 8/15/90.

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh, PA, Co: Allegheny
Location: Between Campania and Wiltzie Streets.
Landholding Agency: VA
Property Number: 979010080
Status: Unutilized
Comment: 52.42 acres; heavily wooded; property includes dump areas and numerous site storm drain outfalls.

South Carolina

E. O. Tract J
J. Strom Thurmond Dam and Reservoir
(See County), SC, Co: McCormick
Location: 4 miles southwest of Plum Branch SC on road to Clarks Mill Marina.
Landholding Agency: COE
Property Number: 319011514
Status: Unutilized
Comment: 57 acres; potential utilities; most recent use—forest and wildlife reserve.

E. O. Tract C
J. Strom Thurmond Dam and Reservoir
(See County), SC, Co: McCormick
Location: Approximately 1 mile north of US 221 and SC 28 intersection.
Landholding Agency: COE
Property Number: 319011515
Status: Unutilized

Comment: 70 acres; potential utilities; most recent use—forest and wildlife reserve.

Texas

Land

Olin E. Teague Veterans Center

1901 South 1st Street

Temple, TX, Co: Bell

Landholding Agency: VA

Property Number: 979010079

Status: Underutilized

Comment: 13 acres; portion formerly landfill; portion near flammable materials; railroad crosses property; potential utilities.

Washington

Asotin Quarry

Lower Granite Lock and Dam

Asotin, WA, Co: Asotin

Location: South of city limits; west of Upriver Road

Landholding Agency: COE

Property Number: 319011508

Status: Excess

Comment: 39.42 acres; no utilities; very hilly; potential electricity

West Virginia

Morgantown Lock and Dam

Box 3 RD #2

Morgantown, WV, Co: Monongahela

Landholding Agency: COE

Property Number: 319011532

Status: Unutilized

Comment: 13.94 acres; potential utilities.

Suitable Buildings (by State)

Arkansas

U.S. Army Garrison

Fort Chaffee

1051 2nd Avenue

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013235

Status: Underutilized

Comment: 3191 sq. ft.; 2 story wood frame; possible asbestos; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1050 2nd Avenue

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013236

Status: Underutilized

Comment: 3191 sq. ft.; 2 story wood frame; possible asbestos; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1049 2nd Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013237

Status: Underutilized

Comment: 1711 sq. ft.; 2 story wood frame; possible asbestos; selected periods used for military training; most recent use—supply and administration.

U.S. Army Garrison

Fort Chaffee

1047 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013238

Status: Underutilized

Comment: 2717 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training.

U.S. Army Garrison

Fort Chaffee

1046 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013239

Status: Underutilized

Comment: 1615 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training.

U.S. Army Garrison

Fort Chaffee

1045 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013240

Status: Underutilized

Comment: 1159 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training; most recent use—supply and administration.

U.S. Army Garrison

Fort Chaffee

1044 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013241

Status: Underutilized

Comment: 1159 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training; most recent use—office.

U.S. Army Garrison

Fort Chaffee

1043 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013242

Status: Underutilized

Comment: 1615 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training; most recent use—supply and administration.

U.S. Army Garrison

Fort Chaffee

1042 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013243

Status: Underutilized

Comment: 2717 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training.

U.S. Army Garrison

Fort Chaffee

1041 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013244

Status: Underutilized

Comment: 2717 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training; most recent use—laundry.

U.S. Army Garrison

Fort Chaffee

1040 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013245

Status: Underutilized

Comment: 1615 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training; most recent use—supply and administration.

U.S. Army Garrison

Fort Chaffee

1038 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013246

Status: Underutilized

Comment: 2290 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training; most recent use—supply and administration.

U.S. Army Garrison

Fort Chaffee

1039 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013247

Status: Underutilized

Comment: 1159 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training; most recent use—office.

U.S. Army Garrison

Fort Chaffee

1037 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013248

Status: Underutilized

Comment: 2221 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training; most recent use—supply and administration.

U.S. Army Garrison

Fort Chaffee

1034 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013249

Status: Underutilized

Comment: 2221 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training.

U.S. Army Garrison

Fort Chaffee

1032 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013250

Status: Underutilized

Comment: 2290 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training; most recent use—office.

U.S. Army Garrison

Fort Chaffee

1031 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013251

Status: Underutilized

Comment: 2221 sq. ft.; 1 story wood frame; possible asbestos; selected periods used for military training.

U.S. Army Garrison

Fort Chaffee

1054 2nd Avenue

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013252

Status: Underutilized

U.S. Army Garrison
Fort Chaffee
1011 Chaffee Blvd.
Barling, AR, Co: Sebastian
Landholding Agency: Army

Property Number: 219013273

Status: Underutilized

Comment: 3191 sq. ft.; 2 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1012 Chaffee Blvd.

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013274

Status: Underutilized

Base Closure

Comment: 3191 sq. ft.; 2 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1013 Chaffee Blvd.

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013275

Status: Underutilized

Comment: 3191 sq. ft.; 2 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1014 Chaffee Blvd.

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013276

Status: Underutilized

Comment: 3191 sq. ft.; 2 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1015 Chaffee Blvd.

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013277

Status: Underutilized

Comment: 3191 sq. ft.; 2 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1016 Chaffee Blvd.

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013278

Status: Underutilized

Comment: 3191 sq. ft.; 2 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1017 Chaffee Blvd.

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013279

Status: Underutilized

Comment: 3191 sq. ft.; 2 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1018 Chaffee Blvd.

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013280

Status: Underutilized

Comment: 3191 sq. ft.; 2 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1019 Chaffee Blvd.

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013281

Status: Underutilized

Comment: 3191 sq. ft.; 2 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1020 Chaffee Blvd.

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013282

Status: Underutilized

Comment: 3191 sq. ft.; 2 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1021 Chaffee Blvd.

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013283

Status: Underutilized

Comment: 3191 sq. ft.; 2 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1023 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013284

Status: Underutilized

Comment: 1536 sq. ft.; 1 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1024 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013285

Status: Underutilized

Comment: 2080 sq. ft.; 1 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1025 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013286

Status: Underutilized

Comment: 2290 sq. ft.; 1 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1026 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013287

Status: Underutilized

Comment: 2221 sq. ft.; 1 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1027 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013288

Status: Underutilized

Comment: 2290 sq. ft.; 1 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1028 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013289

Status: Underutilized

Comment: 2221 sq. ft.; 1 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1029 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013290

Status: Underutilized

Comment: 2290 sq. ft.; 1 story wood frame; selected periods used for military training; most recent use—barracks.

U.S. Army Garrison

Fort Chaffee

1030 1st Street

Barling, AR, Co: Sebastian

Landholding Agency: Army

Property Number: 219013291

Status: Underutilized

Comment: 2290 sq. ft.; 1 story wood frame; selected periods used for military training; most recent use—barracks.

California

Santa Fe Flood Control Basin

Irwindale, CA, Co: Los Angeles

Landholding Agency: COE

Property Number: 319011298

Status: Unutilized

Comment: 1400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access.

Indiana

Bldg. 719-1

Indiana Army Ammunition Plant

Charlestown, IN, Co: Clark

Landholding Agency: Army

Property Number: 219013578

Status: Underutilized

Comment: 5000 sq. ft.; 1 story brick frame; secured area with alternate access; most recent use—administration.

Bldg. 703-1C

Indiana Army Ammunition Plant

Charlestown, IN, Co: Clark

Location: Gate 22 off Highway 22

Landholding Agency: Army

Property Number: 219013761

Status: Underutilized

Comment: 4000 sq. ft.; 2 story brick frame; possible asbestos; most recent use—exercise area.

Bldg. 1011 (Portion of)

Indiana Army Ammunition Plant

End of 3rd Street

Charlestown, IN, Co: Clark

Location: East of State Highway 62 at Gate 3

Landholding Agency: Army

Property Number: 219013762
Status: Underutilized
Comment: 4040 sq. ft.; 1 story concrete block frame; possible asbestos; secured area with alternate access; most recent use—office.

Bldg. 1001 (Portion of)
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark
Location: South end of 3rd Street, East of Highway 62 at entrance gate.

Landholding Agency: Army
Property Number: 219013763
Status: Underutilized
Comment: 55630 sq. ft.; 1 story concrete block; possible asbestos; secured area with alternate access; most recent use cloth bag manufacturing.

Bldg. 720
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark
Landholding Agency: Army
Property Number: 219013765
Status: Underutilized
Comment: 5000 sq. ft.; 2 story brick frame; possible asbestos; secured area with alternate access; most recent use administrative.

Kansas
Bldg. T-2020
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013292
Status: Underutilized
Comment: 2765 sq. ft.; 1 story wood frame; extensive asbestos present; selected periods used for military training exercises.

Bldg. T-2021
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013293
Status: Underutilized
Comment: 2948 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises; most recent use—barracks.

Bldg. T-2022
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013294
Status: Underutilized
Comment: 2948 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises; most recent use—barracks.

Bldg. T-2023
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013295
Status: Underutilized
Comment: 2948 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises; most recent use—barracks.

Bldg. T-2024
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013296
Status: Underutilized
Comment: 2948 sq. ft.; 2 story wood frame; extensive asbestos present; selected

periods used for military training exercises; most recent use—barracks.

Bldg. T-2025
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013297
Status: Underutilized
Comment: 2948 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises; most recent use—barracks.

Bldg. T-2026
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013298
Status: Underutilized
Comment: 2948 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises; most recent use—barracks.

Bldg. T-2027
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013299
Status: Underutilized
Comment: 2948 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises; most recent use—barracks.

Bldg. T-2028
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013300
Status: Underutilized
Comment: 2948 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises; most recent use—barracks.

Bldg. T-2029
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013301
Status: Underutilized
Comment: 2765 sq. ft.; 1 story wood frame; extensive asbestos present; selected periods used for military training exercises.

Bldg. T-2035
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013302
Status: Underutilized
Comment: 2765 sq. ft.; 1 story wood frame; extensive asbestos present; selected periods used for military training exercises.

Bldg. T-2032
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013303
Status: Underutilized
Comment: 928 sq. ft.; 1 story wood frame; extensive asbestos present; selected periods used for military training exercises.

Bldg. T-2033
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013304

Status: Underutilized
Comment: 1181 sq. ft.; 1 story wood frame; extensive asbestos present; selected periods used for military training exercises.

Bldg. T-2038
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013305
Status: Underutilized
Comment: 1215 sq. ft.; 1 story wood frame; extensive asbestos present; selected periods used for military training exercises.

Bldg. T-2039
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013306
Status: Underutilized
Comment: 1090 sq. ft.; 1 story wood frame; extensive asbestos present; selected periods used for military training exercises.

Bldg. T-2040
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013307
Status: Underutilized
Comment: 2765 sq. ft.; 1 story wood frame; extensive asbestos present; selected periods used for military training exercises.

Bldg. T-2041
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013308
Status: Underutilized
Comment: 2948 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises; most recent use—barracks.

Bldg. T-2042
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013309
Status: Underutilized
Comment: 2948 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises; most recent use—barracks.

Bldg. T-2043
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013310
Status: Underutilized
Comment: 2948 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises; most recent use—barracks.

Bldg. T-2044
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013311
Status: Underutilized
Comment: 2948 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises; most recent use—barracks.

Bldg. T-2045
Fort Riley
Fort Riley, KS, Co: Riley

Property Number: 219013336

Property Number: 219013359
Status: Underutilized

Property Number: 219013382
Status: Underutilized

Fort Riley, KS, Co: Riley

periods used for military training exercises.
Bldg. T-2575
Fort Riley
Fort Riley, KS, Co: Riley
Landholding Agency: Army
Property Number: 219013430
Status: Underutilized

Comment: 3660 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises.

Bldg. T-2576

Fort Riley

Fort Riley, KS, Co: Riley

Landholding Agency: Army

Property Number: 219013431

Status: Underutilized

Comment: 3660 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises.

Bldg. T-2577

Fort Riley

Fort Riley, KS, Co: Riley

Landholding Agency: Army

Property Number: 219013432

Status: Underutilized

Comment: 3660 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises.

Bldg. T-2578

Fort Riley

Fort Riley, KS, Co: Riley

Landholding Agency: Army

Property Number: 219013433

Status: Underutilized

Comment: 3660 sq. ft.; 2 story wood frame; extensive asbestos present; selected periods used for military training exercises.

Bldg. T-2579

Fort Riley

Fort Riley, KS, Co: Riley

Landholding Agency: Army

Property Number: 219013434

Status: Underutilized

Comment: 2765 sq. ft.; 1 story wood frame; extensive asbestos present; selected periods used for military training exercises.

Maryland

Bldg. 6926

Taylor Avenue

Fort Meade, MD, Co: Anne Arundel

Landholding Agency: Army

Property Number: 219013605

Status: Unutilized

Comment: 1275 sq. ft.; 1 story frame with basement (216 sq. ft.); possible asbestos; termite damage.

Bldg. 157

Fort Meade

Chisholm Street

Fort Meade, MD, Co: Anne Arundel

Landholding Agency: Army

Property Number: 219013606

Status: Unutilized

Comment: 4720 sq. ft.; 2 story frame bks.; possible asbestos; needs major rehab.

Bldg. 2296

Fort Meade

4th Street

Fort Meade, MD, Co: Anne Arundel

Landholding Agency: Army

Property Number: 219013607

Status: Unutilized

Comment: 2740 sq. ft.; 1 story frame warehouse; possible asbestos; potential use—storage.

Bldg. 832

Fort Meade

15th Street

Fort Meade, MD, Co: Anne Arundel

Landholding Agency: Army

Property Number: 219013608

Status: Unutilized

Comment: 2208 sq. ft.; 1 story wood frame; possible asbestos; needs major rehab.

Bldg. 2017

Fort Meade

20th Street

Fort Meade, MD, Co: Anne Arundel

Landholding Agency: Army

Property Number: 219013609

Status: Unutilized

Comment: 2272 sq. ft.; 1 story wood frame; possible asbestos; most recent use—administrative.

Bldg. 841

Fort Meade

15th Street

Fort Meade, MD, Co: Anne Arundel

Landholding Agency: Army

Property Number: 219013610

Status: Unutilized

Comment: 3537 sq. ft.; 1 story with balcony; possible asbestos; no furnace; needs major rehab.

Bldg. 143

Fort Meade

1st and Saxton Streets

Fort Meade, MD, Co: Anne Arundel

Landholding Agency: Army

Property Number: 219013611

Status: Unutilized

Comment: 7670 sq. ft.; 2 story wood frame; possible asbestos; needs rehab; no furnace.

Bldg. 2250A

Fort Meade

Fort Meade, MD, Co: Anne Arundel

Landholding Agency: Army

Property Number: 219013612

Status: Unutilized

Comment: 240 sq. ft.; 1 story metal/wood shed; structurally unsound; potential use—storage.

Minnesota

Le Sueur USAR Center

620 Turill Street

Le Sueur, MN, Co: Le Sueur

Landholding Agency: Army

Property Number: 219013558

Status: Underutilized

Comment: 4316/1325 sq. ft.; 1 story; most recent use—storage.

North Dakota

Bldg. 1

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010057

Status: Unutilized

Comment: 9 story concrete frame; asbestos present on pipes; needs rehab.

Bldg. 2

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010058

Status: Unutilized

Comment: 2672 sq. ft.; 2 story wood frame; asbestos present on pipes.

Bldg. 3

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010059

Status: Unutilized

Comment: 2508 sq. ft.; 3 story wood frame; asbestos present on pipes; needs rehab

Bldg. 4

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010060

Status: Unutilized

Comment: 2520 sq. ft.; 1 story wood frame; asbestos present on pipes.

Bldg. 5

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010061

Status: Unutilized

Comment: 7184 sq. ft.; 1 story wood frame; asbestos present on pipes; needs rehab.

Bldg. 6

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010062

Status: Unutilized

Comment: 7832 sq. ft.; 2 story concrete block; asbestos present on pipes.

Bldg. 7

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010063

Status: Unutilized

Comment: 3780 sq. ft.; 1 story brick frame; asbestos present on pipes; most recent use—supply warehouse.

Bldg. 8

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010064

Status: Unutilized

Comment: 2709 sq. ft.; 1 story brick frame; asbestos present on pipes; most recent use—vehicle garage; needs rehab.

Bldg. 12

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010065

Status: Unutilized

Comment: 1350 sq. ft.; 1 story brick frame; asbestos present on pipes; most recent use—maintenance shop.

Bldg. 16

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010066

Status: Unutilized

Comment: 742 sq. ft.; 1 story wood frame; limited utilities; most recent use—vehicle garage.

Bldg. 17

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010067

Status: Unutilized

Comment: 220 sq. ft.; 1 story wood frame; limited utilities; most recent use—vehicle garage.

Bldg. 18

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010068

Status: Unutilized

Comment: 2093 sq. ft.; 1 story wood frame; needs rehab; asbestos present on pipes.

Bldg. 19

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010069

Status: Unutilized

Comment: 2093 sq. ft.; 1 story wood frame; needs rehab; asbestos present on pipes.

Bldg. 20

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010070

Status: Unutilized

Comment: 742 sq. ft.; 1 story wood frame; limited utilities; most recent use—vehicle garage.

Bldg. 21

VA. Medical Center

12th St. and 9th Avenue, N.W.

Minot, ND, Co: Ward

Landholding Agency: VA

Property Number: 979010071

Status: Underutilized

Comment: 326 sq. ft.; 1 story concrete frame; limited utilities; most recent use—water plant; asbestos present on pipes.

New Mexico

Bldg. 3W

Conchas Lake Project

(See County), NM, Co: San Miguel

Landholding Agency: COE

Property Number: 319011507

Status: Underutilized

Comment: 1000 sq. ft.; 1 story adobe residence; intermittently occupied.

Bldg. 2E

Conchas Lake Project Office

(See County), NM, Co: San Miguel

Landholding Agency: COE

Property Number: 319011538

Status: Underutilized

Comment: 1000 sq. ft.; 1 story adobe residence.

New York

Nike 25 (Rocky Point)

Fort Hamilton

1 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011455

Status: Excess

Base Closure

Comment: 1200 sq. ft.; 1 story frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

2 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011456

Status: Excess

Base Closure

Comment: 1200 sq. ft.; 1 story frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

3 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011457

Status: Excess

Base Closure

Comment: 1036 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

4 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011458

Status: Excess

Base Closure

Comment: 1036 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

5 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011459

Status: Excess

Base Closure

Comment: 1036 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

6 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011460

Status: Excess

Base Closure

Comment: 1036 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

7 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011461

Status: Excess

Base Closure

Comment: 1200 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

8 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011462

Status: Excess

Base Closure

Comment: 1200 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

9 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011463

Status: Excess

Base Closure

Comment: 1036 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

10 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011464

Status: Excess

Base Closure

Comment: 1036 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

11 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011465

Status: Excess

Base Closure

Comment: 1200 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

12 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011466

Status: Excess

Base Closure

Comment: 1200 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

13 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011467

Status: Excess

Base Closure

Comment: 1036 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

14 Defense Hill Road

Rocky Point, NY, Co: Suffolk

Landholding Agency: COE

Property Number: 319011468

Status: Excess

Base Closure

Comment: 1036 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)

Fort Hamilton

15 Defense Hill Road

Rocky Point, NY, Co: Suffolk
Landholding Agency: COE
Property Number: 319011469
Status: Excess
Base Closure
Comment: 1200 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Nike 25 (Rocky Point)
Fort Hamilton
16 Defense Hill Road
Rocky Point, NY, Co: Suffolk
Landholding Agency: COE
Property Number: 319011470
Status: Excess
Base Closure
Comment: 1036 sq. ft.; 1 story wood frame residence; scheduled to be vacated 8/15/90.

Pennsylvania

C.E. Kelly Support Facility
Finleyville Area Site 52, S-101-Q
Private Road
Finleyville, PA, Co: Washington
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE
Property Number: 319011407
Status: Excess
Base Closure
Comment: 1307 sq. ft.; 1 story frame residence; possible asbestos; scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Finleyville Area Site 52, S-102-Q
Private Road
Finleyville, PA, Co: Washington
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE
Property Number: 319011409
Status: Excess
Base Closure
Comment: 1121 sq. ft.; 1 story frame residence; possible asbestos; scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Finleyville Area Site 52, S-103-Q
Private Road
Finleyville, PA, Co: Washington
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE
Property Number: 319011410
Status: Excess
Base Closure
Comment: 1121 sq. ft.; 1 story frame residence; possible asbestos; scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Finleyville Area Site 52, S-104-Q
Private Road
Finleyville, PA, Co: Washington
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE
Property Number: 319011411
Status: Excess
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence; possible asbestos; scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Finleyville Area Site 52, S-105-Q

Private Road
Finleyville, PA, Co: Washington
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE
Property Number: 319011412
Status: Excess
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence; possible asbestos; scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Finleyville Area Site 52, S-106-Q
Private Road
Finleyville, PA, Co: Washington
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE
Property Number: 319011413
Status: Excess
Base Closure
Comment: 1013 sq. ft.; 1 story frame residence; possible asbestos; scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Finleyville Area Site 52, S-107-Q
Private Road
Finleyville, PA, Co: Washington
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE
Property Number: 319011414
Status: Excess
Base Closure
Comment: 1013 sq. ft.; 1 story frame residence; possible asbestos; scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Finleyville Area Site 52, S-108-Q
Private Road
Finleyville, PA, Co: Washington
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE
Property Number: 319011415
Status: Excess
Base Closure
Comment: 1013 sq. ft.; 1 story frame residence; possible asbestos; scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Finleyville Area Site 52, S-109-Q
Private Road
Finleyville, PA, Co: Washington
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE
Property Number: 319011416
Status: Excess
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence; possible asbestos; scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Finleyville Area Site 52, S-110-Q
Private Road
Finleyville, PA, Co: Washington
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE
Property Number: 319011417
Status: Excess
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence; possible asbestos; scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Finleyville Area Site 52, S-111-Q
Private Road
Finleyville, PA, Co: Washington
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE
Property Number: 319011418
Status: Excess
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence; possible asbestos; scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Finleyville Area Site 52, S-112-Q
Private Road
Finleyville, PA, Co: Washington
Location: Route 88 to Mineral Beach and turn left.
Landholding Agency: COE
Property Number: 319011419
Status: Excess
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence; possible asbestos; scheduled to be vacated 8/15/90.

Bldg. S-73-Q
Site 42, Elizabeth Area
R.D. No. 4
Elizabeth, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011420
Status: Excess
Base Closure
Comment: 1307 sq. ft.; 1 story frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. S-74-Q
Site 42, Elizabeth Area
R.D. No. 4
Elizabeth, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011421
Status: Excess
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. S-75-Q
Site 42, Elizabeth Area
R.D. No. 4
Elizabeth, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011422
Status: Excess
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. S-76-Q
Site 42, Elizabeth Area
R.D. No. 4
Elizabeth, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011423
Status: Excess
Base Closure
Comment: 1117 sq. ft.; 1 story frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. S-77-Q
Site 42, Elizabeth Area
R.D. No. 4
Elizabeth, PA, Co: Allegheny

Landholding Agency: COE
Property Number: 319011424

Status: Excess

Base Closure

Comment: 1117 sq. ft.; 1 story frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. S-78-Q

Site 42, Elizabeth Area

R.D. No. 4

Elizabeth, PA, Co: Allegheny

Landholding Agency: COE

Property Number: 319011425

Status: Excess

Base Closure

Comment: 1013 sq. ft.; 1 story frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. S-79-Q

Site 52, Elizabeth Area

R.D. No. 4

Elizabeth, PA, Co: Allegheny

Landholding Agency: COE

Property Number: 319011426

Status: Excess

Base Closure

Comment: 1013 sq. ft.; 1 story frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. S-80-Q

Site 42, Elizabeth Area

R.D. No. 4

Elizabeth, PA, Co: Allegheny

Landholding Agency: COE

Property Number: 319011427

Status: Excess

Base Closure

Comment: 1013 sq. ft.; 1 story frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. S-81-Q

Site 42, Elizabeth Area

R.D. No. 4

Elizabeth, PA, Co: Allegheny

Landholding Agency: COE

Property Number: 319011428

Status: Excess

Base Closure

Comment: 1117 sq. ft.; 1 story frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. S-82-Q

Site 42, Elizabeth Area

R.D. No. 4

Elizabeth, PA, Co: Allegheny

Landholding Agency: COE

Property Number: 319011429

Status: Excess

Base Closure

Comment: 1117 sq. ft.; 1 story frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. S-83-Q

Site 42, Elizabeth Area

R.D. No. 4

Elizabeth, PA, Co: Allegheny

Landholding Agency: COE

Property Number: 319011430

Status: Excess

Base Closure

Comment: 1121 sq. ft.; 1 story frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Bldg. S-84-Q

Site 42, Elizabeth Area

R.D. No. 4

Elizabeth, PA, Co: Allegheny

Landholding Agency: COE

Property Number: 319011431

Status: Excess

Base Closure

Comment: 1121 sq. ft.; 1 story frame residence; possible asbestos in floor tiles; scheduled to be vacated 8/15/90.

Texas

Bldg. 4

Fort Hood

Headquarters Avenue

Fort Hood, TX, Co: Bell

Landholding Agency: Army

Property Number: 219013678

Status: Unutilized

Comment: 4190 sq. ft.; 2 story; potential utilities; most recent use—administrative office.

Bldg. No. 5

Fort Hood

Headquarters Avenue

Fort Hood, TX, Co: Bell

Landholding Agency: Army

Property Number: 219013679

Status: Unutilized

Comment: 5594 sq. ft.; 2 story; potential utilities; most recent use—administrative office.

Bldg. No. 6

Fort Hood

Headquarters Avenue

Fort Hood, TX, Co: Bell

Landholding Agency: Army

Property Number: 219013680

Status: Unutilized

Comment: 4190 sq. ft.; 2 story wood frame; potential utilities; needs rehab.

Bldg. No. 8

Fort Hood

Headquarters Avenue

Fort Hood, TX, Co: Bell/Coryell

Landholding Agency: Army

Property Number: 219013681

Status: Unutilized

Comment: 4855 sq. ft.; potential utilities; possible asbestos; most recent use—administrative office.

Bldg. No. 9

Fort Hood

Headquarters Avenue

Fort Hood, TX, Co: Bell

Landholding Agency: Army

Property Number: 219013682

Status: Unutilized

Comment: 10835 sq. ft.; 2 story temporary residence; potential utilities; possible asbestos; needs rehab.

Bldg. No. 36

Fort Hood

Battalion Avenue

Fort Hood, TX, Co: Bell

Landholding Agency: Army

Property Number: 219013683

Status: Unutilized

Comment: 2025 sq. ft.; 1 story; potential utilities; most recent use—administrative office.

Bldg. No. 105

Fort Hood

Headquarters Avenue

Fort Hood, TX, Co: Bell

Landholding Agency: Army Property Number: 219013684

Status: Unutilized

Comment: 7239 sq. ft.; 2 story; potential utilities; most recent use—administrative office.

Bldg. No. 11

Fort Hood

Headquarters Avenue

Fort Hood, TX, Co: Bell

Landholding Agency: Army

Property Number: 219013685

Status: Unutilized

Comment: 3663 sq. ft.; 1 story; potential utilities; most recent use—administrative office.

Bldg. No. 10

Fort Hood

Headquarters Avenue

Fort Hood, TX, Co: Bell

Landholding Agency: Army

Property Number: 219013686

Status: Unutilized

Comment: 6493 sq. ft.; 1 story; potential utilities; possible asbestos; most recent use—administrative office.

Bldg. No. 1809

Fort Hood

47th Street

Fort Hood, TX, Co: Bell/Coryell

Landholding Agency: Army

Property Number: 219013687

Status: Unutilized

Comment: 2467 sq. ft.; 1 story frame; potential utilities; needs rehab; most recent use—classroom.

Bldg. 2201

Fort Hood

Headquarters Avenue

Fort Hood, TX, Co: Bell

Landholding Agency: Army

Property Number: 219013688

Status: Unutilized

Comment: 2699 sq. ft.; 1 story; potential utilities; possible asbestos; needs rehab.

Bldg. 2202

Fort Hood

Headquarters Avenue

Fort Hood, TX, Co: Bell

Landholding Agency: Army

Property Number: 219013689

Status: Unutilized

Comment: 2761 sq. ft.; 1 story; potential utilities; most recent use—administrative office.

Bldg. 2203

Fort Hood

Headquarters Avenue

Fort Hood, TX, Co: Bell

Landholding Agency: Army

Property Number: 219013690

Status: Unutilized

Comment: 5522 sq. ft.; 2 story; potential utilities; most recent use—administrative offices.

Bldg. 2209

Fort Hood

Headquarters Avenue

Fort Hood, TX, Co: Bell

Landholding Agency: Army

Property Number: 219013691

Status: Unutilized

Comment: 4779 sq. ft.; 2 story; potential utilities; most recent use—thrift shop.

Bldg. 2210
Fort Hood
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219013692
Status: Unutilized
Comment: 7239 sq. ft.; 2 story; potential utilities; most recent use—thrift shop.

Bldg. 2211
Fort Hood
Headquarters Avenue
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219013693
Status: Unutilized
Comment: 7239 sq. ft.; 2 story; potential utilities; needs major rehab; most recent use—guest house/storage.

Bldg. 2222
Fort Hood
Headquarters Avenue
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219013694
Status: Unutilized
Comment: 4459 sq. ft.; 2 story; potential utilities; most recent use—administrative office.

Bldg. 2223
Fort Hood
Headquarters Avenue
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219013695
Status: Unutilized
Comment: 864 sq. ft.; 1 story; potential utilities; most recent use administrative office.

Bldg. 2225
Fort Hood
52nd Street
Fort Hood, TX, Co: Bell/Coryell
Landholding Agency: Army
Property Number: 219013696
Status: Unutilized
Comment: 2607 sq. ft.; 1 story temporary frame; potential utilities; most recent use—administrative office.

Bldg. 2226
Fort Hood
52nd Street
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219013697
Status: Unutilized
Comment: 1890 sq. ft.; 1 story; potential utilities; most recent use—administrative office.

Bldg. 2229
Fort Hood
Battalion Avenue
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219013698
Status: Unutilized
Comment: 3150 sq. ft.; 2 story; potential utilities; most recent use—administrative office.

Bldg. 2231
Fort Hood
Battalion Avenue
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219013699
Status: Unutilized

Comment: 1998 sq. ft.; 1 story temporary frame; needs rehab.

Bldg. 2233
Fort Hood
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219013700
Status: Underutilized
Comment: 6480 sq. ft.; 1 story frame; potential utilities; most recent use—classroom/PX storage.

Bldg. 2238
Fort Hood
Headquarters Avenue
Fort Hood, TX, Co: Bell/Coryell
Landholding Agency: Army
Property Number: 219013701
Status: Underutilized
Comment: 1620 sq. ft.; potential utilities; most recent use—storage; needs rehab.

Bldg. 56165
Fort Hood
Ammo. Holding Area Road
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219013702
Status: Unutilized
Comment: 200 sq. ft.; potential utilities; needs rehab; most recent use—sentry station.

Bldg. 56757
Fort Hood
28th Street
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219013704
Status: Unutilized
Comment: 1008 sq. ft.; 1 story temporary frame; potential utilities; needs rehab.

Fort Bliss
654 Pleasonton Road
El Paso, TX, Co: El Paso
Landholding Agency: Army
Property Number: 219013740
Comment: 3540 sq. ft.; 2 story wood frame; needs rehab; most recent use—storage.

Fort Bliss
655 Pleasonton Road
El Paso, TX, Co: El Paso
Landholding Agency: Army
Property Number: 219013742
Status: Unutilized
Comment: 3540 sq. ft.; 2 story wood frame; needs rehab; most recent use—officer's quarters.

Fort Bliss
657 Pleasonton Road
El Paso, TX, Co: El Paso
Landholding Agency: Army
Property Number: 219013743
Status: Unutilized
Comment: 927 sq. ft.; 1 story wood frame; needs rehab; most recent use—storage.

Fort Bliss
658 Pleasonton Road
El Paso, TX, Co: El Paso
Landholding Agency: Army
Property Number: 219013744
Status: Unutilized
Comment: 858 sq. ft.; 1 story wood frame; needs rehab; most recent use—administrative.

Fort Bliss
662 Pleasonton Road
El Paso, TX, Co: El Paso

Landholding Agency: Army
Property Number: 219013745
Status: Unutilized
Comment: 3540 sq. ft.; 2 story wood frame; needs rehab; most recent use—officer's quarters.

Fort Bliss
663 Pleasonton Road
El Paso, TX, Co: El Paso
Landholding Agency: Army
Property Number: 219013746
Status: Unutilized
Comment: 3540 sq. ft.; 2 story wood frame; needs rehab; possible asbestos; most recent use—officer's quarters.

Fort Bliss
664 Pleasonton Road
El Paso, TX, Co: El Paso
Landholding Agency: Army
Property Number: 219013747
Status: Unutilized
Comment: 3540 sq. ft.; 2 story wood frame; needs rehab; most recent use—officer's quarters.

Fort Bliss
665 Pleasonton Road
El Paso, TX, Co: El Paso
Landholding Agency: Army
Property Number: 219013748
Status: Unutilized
Comment: 3540 sq. ft.; 2 story wood frame; needs rehab; most recent use—officer's quarters.

Fort Bliss
672 Pleasonton Road
El Paso, TX, Co: El Paso
Landholding Agency: Army
Property Number: 219013749
Status: Unutilized
Comment: 3540 sq. ft.; 2 story wood frame; needs rehab; most recent use—enlisted quarters.

Fort Bliss
683 Pleasonton Road
El Paso, TX, Co: El Paso
Landholding Agency: Army
Property Number: 219013750
Status: Unutilized
Comment: 3540 sq. ft.; 2 story wood frame; needs rehab; most recent use—enlisted quarters.

Fort Bliss
684 Pleasonton Road
El Paso, TX, Co: El Paso
Landholding Agency: Army
Property Number: 219013751
Status: Unutilized
Comment: 3540 sq. ft.; 2 story wood frame; needs rehab; most recent use—enlisted quarters.

Fort Bliss
685 Pleasonton Road
El Paso, TX, Co: El Paso
Landholding Agency: Army
Property Number: 219013752
Status: Unutilized
Comment: 3540 sq. ft.; 2 story wood frame; needs rehab; most recent use—enlisted quarters.

Fort Bliss
686 Pleasonton Road
El Paso, TX, Co: El Paso
Landholding Agency: Army
Property Number: 219013753

Status: Unutilized
Comment: 3540 sq. ft.; 2 story wood frame; needs rehab; most recent use—enlisted quarters.

Fort Bliss
 867 Custer Road
 El Paso, TX, Co: El Paso
 Landholding Agency: Army
 Property Number: 219013754
 Status: Unutilized
Comment: 3540 sq. ft.; 2 story wood frame.

Fort Bliss
 868 Custer Road
 El Paso, TX, Co: El Paso
 Landholding Agency: Army
 Property Number: 219013755
 Status: Unutilized
Comment: 3540 sq. ft.; 2 story wood frame.

Fort Bliss
 360 Doniphan Road
 El Paso, TX, Co: El Paso
 Landholding Agency: Army
 Property Number: 219013756
 Status: Unutilized
Comment: 4000 sq. ft.; 2 story wood frame; most recent use—enlisted barracks.

Fort Bliss
 1282 Willow Road
 El Paso, TX, Co: El Paso
 Landholding Agency: Army
 Property Number: 219013757
 Status: Unutilized
Comment: 7829 sq. ft.; 1 story wood frame; most recent use—storage.

Fort Bliss
 5006 Gulick Road
 El Paso, TX, Co: El Paso
 Landholding Agency: Army
 Property Number: 219013758
 Status: Unutilized
Comment: 5752 sq. ft.; 2 story wood frame; most recent use enlisted barracks.

Fort Bliss
 5348 Robert E. Lee Road
 El Paso, TX, Co: El Paso
 Landholding Agency: Army
 Property Number: 219013759
 Status: Unutilized
Comment: 879 sq. ft.; 1 story wood frame.

Fort Bliss
 Biggs Army Airfield
 11113 CSM E. Slewitzer Street
 El Paso, TX, Co: El Paso
 Landholding Agency: Army
 Property Number: 219013760
 Status: Unutilized
Comment: 1500 sq. ft.; 1 story wood frame; most recent use—administrative.

Virginia

Bldg. 1400
 Woodbridge Housing Site, Dawson Beach Road
 Fort Belvoir Military Reservation
 Woodbridge, VA, Co: Prince William
 Location: Across from Harry Diamond Labs
 Landholding Agency: COE
 Property Number: 319011432
 Status: Excess
 Base Closure
Comment: 1606 sq. ft.; 2 story brick residence; possible asbestos; scheduled to be vacated 8/15/90.

Bldg. 1402

Woodbridge Housing Site, Dawson Beach Road
 Fort Belvoir Military Reservation
 Woodbridge, VA, Co: Prince William
 Location: Across from Harry Diamond Labs
 Landholding Agency: COE
 Property Number: 319011433
 Status: Excess
 Base Closure
Comment: 1606 sq. ft.; 2 story brick residence; possible asbestos; scheduled to be vacated 8/15/90.

Bldg. 1404
 Woodbridge Housing Site, Dawson Beach Road
 Fort Belvoir Military Reservation
 Woodbridge, VA, Co: Prince William
 Location: Across from Harry Diamond Labs
 Landholding Agency: COE
 Property Number: 319011434
 Status: Excess
 Base Closure
Comment: 1606 sq. ft.; 2 story brick residence; possible asbestos; scheduled to be vacated 8/15/90.

Bldg. 1406
 Woodbridge Housing Site, Dawson Beach Road
 Fort Belvoir Military Reservation
 Woodbridge, VA, Co: Prince William
 Location: Across from Harry Diamond Labs
 Landholding Agency: COE
 Property Number: 319011435
 Status: Excess
 Base Closure
Comment: 1606 sq. ft.; 2 story brick residence; possible asbestos; scheduled to be vacated 8/15/90.

Bldg. 1408
 Woodbridge Housing Site, Dawson Beach Road
 Fort Belvoir Military Reservation
 Woodbridge, VA, Co: Prince William
 Location: Across from Harry Diamond Labs
 Landholding Agency: COE
 Property Number: 319011436
 Status: Excess
 Base Closure
Comment: 1606 sq. ft.; 2 story brick residence; possible asbestos; scheduled to be vacated 8/15/90.

Bldg. 1410
 Woodbridge Housing Site, Dawson Beach Road
 Fort Belvoir Military Reservation
 Woodbridge, VA, Co: Prince William
 Location: Across from Harry Diamond Labs
 Landholding Agency: COE
 Property Number: 319011437
 Status: Excess
 Base Closure
Comment: 1606 sq. ft.; 2 story brick residence; possible asbestos; scheduled to be vacated 8/15/90.

Bldg. 1411
 Woodbridge Housing Site, Dawson Beach Road
 Fort Belvoir Military Reservation
 Woodbridge, VA, Co: Prince William
 Location: Across from Harry Diamond Labs
 Landholding Agency: COE
 Property Number: 319011438
 Status: Excess
 Base Closure

Comment: 1606 sq. ft.; 2 story brick residence; possible asbestos; scheduled to be vacated 8/15/90.

Bldg. 1412
 Woodbridge Housing Site, Dawson Beach Road
 Fort Belvoir Military Reservation
 Woodbridge, VA, Co: Prince William
 Location: Across from Harry Diamond Labs
 Landholding Agency: COE
 Property Number: 319011439
 Status: Excess
 Base Closure
Comment: 1550 sq. ft.; 1 story brick residence; possible asbestos; scheduled to be vacated 8/15/90.

Bldg. 1413
 Woodbridge Housing Site, Dawson Beach Road
 Fort Belvoir Military Reservation
 Woodbridge, VA, Co: Prince William
 Location: Across from Harry Diamond Labs
 Landholding Agency: COE
 Property Number: 319011440
 Status: Excess
 Base Closure
Comment: 1550 sq. ft.; 1 story brick residence; possible asbestos; scheduled to be vacated 8/15/90.

Bldg. 14026
 Woodbridge Housing Site, Dawson Beach Road
 Fort Belvoir Military Reservation
 Woodbridge, VA, Co: Prince William
 Landholding Agency: COE
 Property Number: 319011441
 Status: Excess
 Base Closure
Comment: 2417 sq. ft.; masonry block building; most recent use—storage; scheduled to be vacated 8/15/90.

Washington

Bldg 01
 Lower Granite Lock and Dam
 ILLIA Housing
 Pomeroy, WA, Co: Garfield
 Location: Approximately 40 miles from Pomeroy, WA.
 Landholding Agency: COE
 Property Number: 319011509
 Status: Excess
Comment: 1250 sq. ft.; 1 story wood frame residence; off-site removal.

Bldg. 02
 Lower Granite Lock and Dam
 ILLIA Housing
 Pomeroy, WA, Co: Garfield
 Location: Approximately 40 miles from Pomeroy, WA.
 Landholding Agency: COE
 Property Number: 319011510
 Status: Excess
Comment: 1250 sq. ft.; 1 story wood frame residence; off-site removal.

Bldg. 03
 Lower Granite Lock and Dam
 ILLIA Housing
 Pomeroy, WA, Co: Garfield
 Location: Approximately 40 miles from Pomeroy, WA.
 Landholding Agency: COE
 Property Number: 319011511
 Status: Excess

Comment: 1250 sq. ft.; 1 story wood frame residence; off-site removal.

Bldg. 04

Lower Granite Lock and Dam
ILLIA Housing

Pomeroy, WA, Co: Garfield

Location: Approximately 40 miles from
Pomeroy, WA.

Landholding Agency: COE

Property Number: 319011512

Status: Excess

Comment: 1250 sq. ft.; 1 story wood frame; residence; off-site removal.

Silcott Hills Rock Quarry

Lower Granite Lock and Dam

Clarkston, WA, Co: Asotin

Location: Site has access road frontage on US
Highway 12

Landholding Agency: COE

Property Number: 319011513

Status: Excess

Comment: 35 acres; no utilities; hillside; rock quarry.

Wisconsin

Bldg. T-1058

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013435

Status: Unutilized

Comment: 4829 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-10122

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013436

Status: Unutilized

Comment: 1900 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-10123

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013437

Status: Unutilized

Comment: 2405 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-10135

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013438

Status: Unutilized

Comment: 97 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—power plant.

Bldg. T-10136

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013439

Status: Unutilized

Comment: 96 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—power plant.

Bldg. T-10127

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013440

Status: Unutilized

Comment: 1148 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. P-10119

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013441

Status: Unutilized

Comment: 215 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. P-10137

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013442

Status: Unutilized

Comment: 192 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—power plant.

Bldg. T-01088

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013444

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01089

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013445

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01090

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013446

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01091

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013447

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01092

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013448

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01093

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013449

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-10118

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013450

Status: Unutilized

Comment: 1250 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-10120

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013451

Status: Unutilized

Comment: 1250 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T 01094

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013452

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01095

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013453

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01096

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013454

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01097

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013455

Status: Unutilized

Status: Unutilized

Bldg. T-01067
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013500
Status: Unutilized
Comment: 4793 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01068
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013501
Status: Unutilized
Comment: 4848 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01069
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013502
Status: Unutilized
Comment: 4829 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01032
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013503
Status: Unutilized
Comment: 5588 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01034
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013504
Status: Unutilized
Comment: 4829 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01041
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013505
Status: Unutilized
Comment: 4829 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01054
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013506
Status: Unutilized
Comment: 4184 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01033
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army

Property Number: 219013507
Status: Unutilized
Comment: 5241 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01012
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013508
Status: Unutilized
Comment: 1273 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings; most recent use—morgue.

Bldg. T-01031
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013509
Status: Unutilized
Comment: 4813 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01002
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013510
Status: Unutilized
Comment: 2573 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01010
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013511
Status: Unutilized
Comment: 8799 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01009
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013512
Status: Unutilized
Comment: 2000 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
building.

Bldg. T-01098
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013513
Status: Unutilized
Comment: 7133 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01099
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013514
Status: Unutilized
Comment: 3294 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
building.

Bldg. T-01022

Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013515
Status: Unutilized
Comment: 4686 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01023
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013516
Status: Unutilized
Comment: 4686 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01024
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013517
Status: Unutilized
Comment: 4686 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01025
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013518
Status: Unutilized
Comment: 4686 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01057
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013519
Status: Unutilized
Comment: 4829 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01084
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013520
Status: Unutilized
Comment: 4686 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01071
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013521
Status: Unutilized
Comment: 4829 sq. ft.; 1 story wood frame;
possible asbestos; hospital/patient ward
buildings.

Bldg. T-01072
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01011

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013545

Status: Unutilized

Comment: 4236 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01012

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013546

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01013

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013547

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01015

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013548

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01016

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013549

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01017

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013550

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01018

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013551

Status: Unutilized

Comment: 5295 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01021

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013552

Status: Unutilized

Comment: 4236 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01004

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013553

Status: Unutilized

Comment: 2815 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01019

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013554

Status: Unutilized

Comment: 2815 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01056

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013555

Status: Unutilized

Comment: 15657 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Bldg. T-01000

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013556

Status: Unutilized

Comment: 3378 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings; most recent use—fire station.

Bldg. T-01055

Fort McCoy

Army Hospital Complex

Sparta, WI, Co: Monroe

Landholding Agency: Army

Property Number: 219013557

Status: Unutilized

Comment: 5471 sq. ft.; 1 story wood frame; possible asbestos; hospital/patient ward buildings.

Former Lockmaster's Dwelling

Cedar Locks

4527 East Wisconsin Road

Appleton, WI, Co: Outagamie

Landholding Agency: COE

Property Number: 319011524

Status: Unutilized

Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling

Appleton 4th Lock

905 South Lowe Street

Appleton, WI, Co: Outagamie

Landholding Agency: COE

Property Number: 319011525

Status: Unutilized

Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling

DePere Lock

100 James Street

De Pere, WI, Co: Brown

Landholding Agency: COE

Property Number: 319011526

Status: Unutilized

Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling

Kaukauna 1st Lock

301 Canal Street

Kaukauna, WI, Co: Outagamie

Landholding Agency: COE

Property Number: 319011527

Status: Unutilized

Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling

Appleton 1st Lock

905 South Oneida Street

Appleton, WI, Co: Outagamie

Landholding Agency: COE

Property Number: 319011531

Status: Unutilized

Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling

Rapid Croche Lock

Lock Road

Wrightstown, WI, Co: Outagamie

Location: 3 miles southwest of intersection

State Highway 96 and Canal Road.

Landholding Agency: COE

Property Number: 319011533

Status: Unutilized

Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling

Little KauKauna Lock

Little KauKauna

Lawrence, WI, Co: Brown

Location: 2 miles southeasterly from

intersection of Lost Dauphin Road (County

Trunk Highway "D") and River Street.

Landholding Agency: COE

Property Number: 319011535

Status: Unutilized

Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling

Little Chute, 2nd Lock

214 Mill Street

Little Chute, WI, Co: Outagamie

Landholding Agency: COE

Property Number: 319011536

Status: Unutilized

Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

West Virginia

Tygart Lake

Route 1

Crafton, WV, Co: Taylor

Landholding Agency: COE

Property Number: 319011528

Status: Unutilized
 Comment: 756 sq. ft.; two story brick residence.

Unsuitable Land (by State)

Alaska

Sanak Harbor Daybeacon
 Sanak Island
 Sanak, AK, Co: Aleutian
 Landholding Agency: DOT
 Property Number: 879010012
 Status: Unutilized
 Reason: Other
 Comment: Isolated area on Arctic Coast.

Missouri

Smith's Fork Park
 Smithville Lake
 Smithville, MO, Co: Clay
 Location: Within Smithville Lake water resource project downstream from dam, adjoins Smithville.
 Landholding Agency: COE
 Property Number: 319011473
 Status: Underutilized
 Reason: Floodway.
 Old Mill Area
 Stockton Lake
 Stockton, MO, Co: Cedar
 Location: Below Stockton Lake Dam on right bank of Outlet Channel/SAC River.
 Approximately 2 miles from Stockton.
 Landholding Agency: COE
 Property Number: 319011477
 Status: Underutilized
 Reason: Floodway.
 Stockton Public Use Area
 Stockton Lake
 Stockton, MO, Co: Cedar
 Location: Adjacent to and east of Stockton, MO.
 Landholding Agency: COE
 Property Number: 319011471
 Status: Underutilized
 Reason: Floodway.

North Carolina

Land
 Atlantic Intracoastal Waterway
 (See County), NC, Co: Currituck
 Location: Near old Coinjack Bridge.
 Landholding Agency: COE
 Property Number: 319011537
 Status: Unutilized
 Reason: Floodway.

Oklahoma

Parcel No. 52
 Fort Gibson Lake
 Section 28
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011360
 Status: Excess
 Reason: Floodway.
 Parcel No. 63
 Fort Gibson Lake
 Section 23 and 26
 (See County), OK, Co: Mayes
 Landholding Agency: COE
 Property Number: 319011391
 Status: Underutilized
 Reason: Floodway.

Pennsylvania

C.E. Kelly Support Facility
 Coraopolis Area Site 71L, Land
 Ewing Mill Road
 Coraopolis, PA, Co: Allegheny
 Landholding Agency: COE
 Property Number: 319011443
 Status: Excess
 Base Closure
 Reason: Within airport runway clear zone
 Comment: Scheduled to be vacated 8/15/90.

Tennessee

Tract 6737
 Blue Creek Recreation Area
 Barkley Lake, Kentucky and Tennessee
 Dover, TN, Co: Stewart
 Location: U.S. Highway 79/TN Highway 701
 Landholding Agency: COE
 Property Number: 319011478
 Status: Underutilized
 Reason: Floodway.
 Tracts 3102, 3105, and 3106
 Brimstone Launching Area
 Cordell Hull Lake and Dam Project
 Gainesboro, TN, Co: Jackson
 Location: Big Bottom Road
 Landholding Agency: COE
 Property Number: 319011479
 Status: Excess
 Reason: Floodway.
 Tract 3507
 Proctor Site
 Cordell Hull Lake and Dam Project
 Celina, TN, Co: Clay
 Location: TN Highway 52
 Landholding Agency: COE
 Property Number: 319011480
 Status: Unutilized
 Reason: Floodway.
 Tract 3721
 Obey
 Cordell Hull Lake and Dam Project
 Celina, TN, Co: Clay
 Location: TN Highway 53
 Landholding Agency: COE
 Property Number: 319011481
 Status: Unutilized
 Reason: Floodway.
 Tracts 608, 609, 611 and 612
 Sullivan Bend Launching Area
 Cordell Hull Lake and Dam Project
 Carthage, TN, Co: Smith
 Location: Sullivan Bend Road
 Landholding Agency: COE
 Property Number: 319011482
 Status: Underutilized
 Reason: Floodway.
 Tract 920
 Indian Creek Camping Area
 Cordell Hull Lake and Dam Project
 Granville, TN, Co: Smith
 Location: TN Highway 53
 Landholding Agency: COE
 Property Number: 319011483
 Status: Underutilized
 Reason: Floodway.
 Tracts 1710, 1716 and 1703
 Flynn's Lick Launching Ramp
 Cordell Hull Lake and Dam Project
 Gainesboro, TN, Co: Jackson
 Location: Whites Bend Road
 Landholding Agency: COE
 Property Number: 319011484
 Status: Underutilized

Reason: Floodway.

Tract 1810
 Wartrace Creek Launching Ramp
 Cordell Hull Lake and Dam Project
 Gainesboro, TN, Co: Jackson
 Location: TN Highway 85
 Landholding Agency: COE
 Property Number: 319011485
 Status: Underutilized
 Reason: Floodway.
 Tract 2524
 Jennings Creek
 Cordell Hull Lake and Dam Project
 Gainesboro, TN, Co: Jackson
 Location: TN Highway 85
 Landholding Agency: COE
 Property Number: 319011486
 Status: Unutilized
 Reason: Floodway.
 Tracts 2905 and 2907
 Webster
 Cordell Hull Lake and Dam Project
 Gainesboro, TN, Co: Jackson
 Location: Big Bottom Road
 Landholding Agency: COE
 Property Number: 319011487
 Status: Unutilized
 Reason: Floodway.
 Tracts 2200 and 2201
 Gainesboro Airport
 Cordell Hull Lake and Dam Project
 Gainesboro, TN, Co: Jackson
 Location: Big Bottom Road
 Landholding Agency: COE
 Property Number: 319011488
 Status: Underutilized
 Reason: Within airport runway clear zone
 Floodway.
 Tracts 710C and 712C
 Sullivan Island
 Cordell Hull Lake and Dam Project
 Carthage, TN, Co: Smith
 Location: Sullivan Bend Road
 Landholding Agency: COE
 Property Number: 319011489
 Status: Unutilized
 Reason: Floodway.
 Tract 2403, Hensley Creek
 Cordell Hull Lake and Dam Project
 Gainesboro, TN, Co: Jackson
 Location: TN Highway 85
 Landholding Agency: COE
 Property Number: 319011490
 Status: Unutilized
 Reason: Floodway.
 Tracts 2117C, 2118 and 2120
 Cordell Hull Lake and Dam Project
 Trace Creek
 Gainesboro, TN, Co: Jackson
 Location: Brooks Ferry Road
 Landholding Agency: COE
 Property Number: 319011491
 Status: Unutilized
 Reason: Floodway.
 Tracts 424, 425 and 426
 Cordell Hull Lake and Dam Project
 Stone Bridge
 Carthage, TN, Co: Smith
 Location: Sullivan Bend Road
 Landholding Agency: COE
 Property Number: 319011492
 Status: Unutilized
 Reason: Floodway.

Tract 517

J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville, TN, Co: Davidson
Location: Interstate 40 to S. Mount Juliet
Road.

Landholding Agency: COE
Property Number: 319011493
Status: Underutilized
Reason: Floodway.

Tract 1811

West Fork Launching Area
Smyrna, TN, Co: Rutherford
Location: Florence road near Enon Springs
Road

Landholding Agency: COE
Property Number: 319011494
Status: Underutilized
Reason: Floodway.

Tract 1504

J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna, TN, Co: Rutherford
Location: Lamon Road
Landholding Agency: COE
Property Number: 319011495
Status: Underutilized
Reason: Floodway.

Tract 1500

J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna, TN, Co: Rutherford
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 319011496
Status: Underutilized
Reason: Floodway.

Tracts 245, 257, and 258

J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville, TN, Co: Davidson
Location: 2.2 miles south of Interstate 40 near
Saunders Ferry Pike.

Landholding Agency: COE
Property Number: 319011497
Status: Underutilized
Reason: Floodway.

Tracts 107, 109 and 110

Cordell Hull Lake and Dam Project
Two Prong
Carthage, TN, Co: Smith
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011498
Status: Unutilized
Reason: Floodway.

Tracts 2919 and 2929

Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro, TN, Co: Jackson
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 319011500
Status: Unutilized
Reason: Floodway.

Tracts 1218 and 1204

Cordell Hull Lake and Dam Project
Granville-Alvin York Road
Granville, TN, Co: Jackson
Landholding Agency: COE
Property Number: 319011501
Status: Unutilized
Reason: Floodway.

Tract 2100

Cordell Hull Lake and Dam Project

Galbreaths Branch
Gainesboro, TN, Co: Jackson
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011502
Status: Unutilized
Reason: Floodway.

Tract 104 et. al.

Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage, TN, Co: Smith
Location: Highway 70 N
Landholding Agency: COE
Property Number: 319011504
Status: Underutilized
Reason: Floodway.

Virginia

Parcel 1 (Byrd Field)

Richmond IAP
5680 Beulah Road
Richmond, VA, Co: Henrico
Landholding Agency: Air Force
Property Number: 189010435
Status: Unutilized
Reason: Floodway.

Parcel 3, (Byrd Field)

Richmond IAP
5680 Beulah Road
Richmond, VA, Co: Henrico
Landholding Agency: Air Force
Property Number: 189010436
Status: Unutilized
Reason: Within 2000 ft. of flammable or
explosive material.

Parcel 2, (Byrd Field)

Richmond IAP
5680 Beulah Road
Richmond, VA, Co: Henrico
Landholding Agency: Air Force
Property Number: 189010437
Status: Unutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

West Virginia

Hildebrand Lock and Dam
Box 89B Route 2
Morgantown, WV, Co: Monongahelia
Landholding Agency: COE
Property Number: 319011508
Status: Unutilized
Reason: Floodway.

Ohio River
Pike Island Locks and Dam
Buffalo Creek
Wellsburg, WV, Co: Brooke
Landholding Agency: COE
Property Number: 319011529
Status: Unutilized
Reason: Floodway.
Morgantown Lock and Dam
Box 3 RD #2
Morgantown, WV, Co: Monongahelia
Landholding Agency: COE
Property Number: 319011530
Status: Unutilized
Reason: Floodway.

Unsuitable Buildings (by State)

California

Bldg. S-554
Sierra Army Depot

Herlong, CA, Co: Lassen
Landholding Agency: Army
Property Number: 219013573
Status: Unutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. T-1776

Fort Ord
Fort Ord, CA, Co: Monterey
Landholding Agency: Army
Property Number: 219013574
Status: Unutilized
Reason: Secured Area.

Bldg. T-1791

Fort Ord
Fort Ord, CA, Co: Monterey
Landholding Agency: Army
Property Number: 219013575
Status: Unutilized
Reason: Secured Area.

Bldg. T-1792

Fort Ord
Fort Ord, CA, Co: Monterey
Landholding Agency: Army
Property Number: 219013576
Status: Unutilized
Reason: Secured Area.

Bldg. T-1793

Fort Ord
Fort Ord, CA, Co: Monterey
Landholding Agency: Army
Property Number: 219013577
Status: Unutilized
Reason: Secured Area.

Bldg. T-1794

Fort Ord
Fort Ord, CA, Co: Monterey
Landholding Agency: Army
Property Number: 219013579
Status: Unutilized
Reason: Secured Area.

Bldg. T-1795

Fort Ord
Fort Ord, CA, Co: Monterey
Landholding Agency: Army
Property Number: 219013580
Status: Unutilized
Reason: Secured Area.

Bldg. T-1796

Fort Ord
Fort Ord, CA, Co: Monterey
Landholding Agency: Army
Property Number: 219013581
Status: Unutilized
Reason: Secured Area.

Bldg. 2

Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank, CA, Co: Stanislaus
Landholding Agency: Army
Property Number: 219013582
Status: Underutilized
Reason: Secured Area.

Bldg. 3

Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank, CA, Co: Stanislaus
Landholding Agency: Army
Property Number: 219013583
Status: Underutilized
Reason: Secured Area.

Bldg. 4

Riverbank Army Ammunition Plant

5300 Claus Road
Riverbank, CA, Co: Stanislaus
Landholding Agency: Army
Property Number: 219013584
Status: Underutilized
Reason: Secured Area.

Bldg. 5
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank, CA, Co: Stanislaus
Landholding Agency: Army
Property Number: 219013585
Status: Underutilized
Reason: Secured Area.

Bldg. 6
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank, CA, Co: Stanislaus
Landholding Agency: Army
Property Number: 219013586
Status: Underutilized
Reason: Secured Area.

Bldg. 7
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank, CA, Co: Stanislaus
Landholding Agency: Army
Property Number: 219013587
Status: Underutilized
Reason: Secured Area.

Bldg. 8
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank, CA, Co: Stanislaus
Landholding Agency: Army
Property Number: 219013588
Status: Underutilized
Reason: Secured Area.

Bldg. 18
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank, CA, Co: Stanislaus
Landholding Agency: Army
Property Number: 219013589
Status: Underutilized
Reason: Secured Area.

Bldg. 156
Riverbank Army Ammunition Plant
5300 Claus Road
Riverbank, CA, Co: Stanislaus
Landholding Agency: Army
Property Number: 219013590
Status: Underutilized
Reason: Secured Area.

Colorado

Bldg. T-1102
Fort Carson
Near Chiles and Ellis
Colorado Springs, CO, Co: El Paso
Landholding Agency: Army
Property Number: 219013591
Status: Unutilized
Reason: Secured Area.

Bldg. T-1103
Fort Carson
Near Chiles and Ellis intersection
Colorado Springs, CO, Co: El Paso
Landholding Agency: Army
Property Number: 219013592
Status: Unutilized
Reason: Secured Area.

Bldg. T-1106
Fort Carson

Near Chiles and Ellis
Colorado Springs, CO, Co: El Paso
Landholding Agency: Army
Property Number: 219013593
Status: Unutilized
Reason: Secured Area.

Bldg. T-3352
Fort Carson
Near Barkley and 35th Street
Colorado Springs, CO, Co: El Paso
Landholding Agency: Army
Property Number: 219013594
Status: Unutilized
Reason: Secured Area.

Bldg. T-6117
Fort Carson
Martinez Street
Colorado Springs, CO, Co: El Paso
Landholding Agency: Army
Property Number: 219013595
Status: Unutilized
Reason: Secured Area.

Bldg. T-6118
Fort Carson
Martinez Street
Colorado Springs, CO, Co: El Paso
Landholding Agency: Army
Property Number: 219013596
Status: Unutilized
Reason: Secured Area.

Bldg. T-6122
Fort Carson
Between Puckett and Martinez Streets
Colorado Springs, CO, Co: El Paso
Landholding Agency: Army
Property Number: 219013597
Status: Unutilized
Reason: Secured Area.

Bldg. T-6123
Fort Carson
Martinez Street
Colorado Springs, CO, Co: El Paso
Landholding Agency: Army
Property Number: 219013598
Status: Unutilized
Reason: Secured Area.

Bldg. T-6128
Fort Carson
Puckett Street
Colorado Springs, CO, Co: El Paso
Landholding Agency: Army
Property Number: 219013599
Status: Unutilized
Reason: Secured Area.

Bldg. T-6129
Fort Carson
Puckett Street
Colorado Springs, CO, Co: El Paso
Landholding Agency: Army
Property Number: 219013600
Status: Unutilized
Reason: Secured Area.

Bldg. T-6131
Fort Carson
Puckett Street
Colorado Springs, CO, Co: El Paso
Landholding Agency: Army
Property Number: 219013601
Status: Unutilized
Reason: Secured Area.

Bldg. T-9641
Fort Carson
Butts Airfield
Colorado Springs, CO, Co: El Paso

Landholding Agency: Army
Property Number: 219013602
Status: Unutilized
Reason: Secured Area.
Bldg. T-9643
Fort Carson
Butts Airfield
Colorado Springs, CO, Co: El Paso
Landholding Agency: Army
Property Number: 219013603
Status: Unutilized
Reason: Secured Area.
Bldg. T-9644
Fort Carson
Butts Airfield
Colorado Springs, CO, Co: El Paso
Landholding Agency: Army
Property Number: 219013604
Status: Unutilized
Reason: Secured Area.

Iowa

Bldg. 600-85
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013706
Status: Unutilized
Reason: Secured Area.

Bldg. 800-04
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013707
Status: Unutilized
Reason: Secured Area.

Bldg. 800-70-2
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013708
Status: Underutilized
Reason: Secured Area.

Bldg. 1-02
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013709
Status: Unutilized
Reason: Secured Area.

Bldg. 1-06-2
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013710
Status: Unutilized
Reason: Secured Area.

Bldg. 1-73E
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013711
Status: Unutilized
Reason: Secured Area.

Bldg. 5B-03-3
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013712
Status: Unutilized
Reason: Secured Area.

Bldg. 5B-09-1
Iowa Army Ammunition Plant

Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013713
Status: Unutilized
Reason: Secured Area.

Bldg. 5B-21
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013714
Status: Unutilized
Reason: Secured Area.

Bldg. 5B-25
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013715
Status: Unutilized
Reason: Secured Area.

Bldg. 5B-26
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013716
Status: Unutilized
Reason: Secured Area.

Bldg. 5B-27
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013717
Status: Unutilized
Reason: Secured Area.

Bldg. 5B-28
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013718
Status: Unutilized
Reason: Secured Area.

Bldg. 5B-29
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013719
Status: Unutilized
Reason: Secured Area.

Bldg. 5B-55
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013720
Status: Unutilized
Reason: Secured Area.

Bldg. 5B-56
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013721
Status: Unutilized
Reason: Secured Area.

Bldg. 6-98
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013722
Status: Unutilized
Reason: Secured Area.

Bldg. 6-28
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013723
Status: Unutilized

Reason: Secured Area
Bldg. 6-33
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013724
Status: Unutilized
Reason: Secured Area.

Bldg. 6-34
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013725
Status: Unutilized
Reason: Secured Area.

Bldg. 6-35
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013726
Status: Unutilized
Reason: Secured Area.

Bldg. 6-69-8
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013727
Status: Unutilized
Reason: Secured Area.

Bldg. 6-88
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013728
Status: Unutilized
Reason: Secured Area.

Bldg. 6-94
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013729
Status: Unutilized
Reason: Secured Area.

Bldg. 6-09-1
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013730
Status: Unutilized
Reason: Secured Area.

Bldg. 6-11
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013731
Status: Unutilized
Reason: Secured Area.

Bldg. 6-18-2
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013732
Status: Unutilized
Reason: Secured Area.

Bldg. 1-08-1A
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013733
Status: Unutilized
Reason: Secured Area.

Bldg. 1-60
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines

Landholding Agency: Army
Property Number: 219013734
Status: Unutilized
Reason: Secured Area
Bldg. 1-64-4
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013735
Status: Unutilized
Reason: Secured Area.

Bldg. 1-67-2E
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013736
Status: Unutilized
Reason: Secured Area.

Bldg. 1-70
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013737
Status: Unutilized
Reason: Secured Area.

Bldg. 1-207-1
Iowa Army Ammunition Plant
Middletown, IA, Co: Des Moines
Landholding Agency: Army
Property Number: 219013738
Status: Unutilized
Reason: Secured Area.

Indiana

Propellant-Igniter Ldg. Line
Indiana Army Ammunition Plant
Charlestown, IN, Co: Clark
Landholding Agency: Army
Property Number: 219013764
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Louisiana

Bldg. 5087
Louisiana Army Ammunition Plant
Area T
Doyline, LA, Co: Webster
Landholding Agency: Army
Property Number: 219013571
Status: Unutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 400
Louisiana Army Ammunition Plant
Area X
Doyline, LA, Co: Webster
Landholding Agency: Army
Property Number: 219013572
Status: Unutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Massachusetts

Bldg. 1900
Westover Air Force Base
Chicopee, MA, Co: Hampden
Landholding Agency: Air Force
Property Number: 189010435
Status: Unutilized
Reason: Secured Area.

Missouri

Lake City Army Ammo. Plant 59
Independence, MO, Co: Independence

Landholding Agency: Army
Property Number: 219013666
Status: Unutilized
Reason: Secured Area.

Lake City Army Ammo. Plant 59A
Independence, MO, Co: Independence
Landholding Agency: Army
Property Number: 219013667
Status: Unutilized
Reason: Secured Area.

Lake City Army Ammo. Plant 59C
Independence, MO, Co: Independence
Landholding Agency: Army
Property Number: 219013668
Status: Unutilized
Reason: Secured Area.

Lake City Army Ammo. Plant 59B
Independence, MO, Co: Independence
Landholding Agency: Army
Property Number: 219013669
Status: Unutilized
Reason: Secured Area.

St. Clair County Jail
H. S. Truman Dam and Reservoir
East side of 3rd Street
Osceola, MO, Co: St. Clair
Location: Approximately 40 ft. south of
intersection Olive and 3rd. Street.
Landholding Agency: COE
Property Number: 319011472
Status: Unutilized
Reason: Floodway.

Dwelling
H. S. Truman Dam and Reservoir Project
A and 3rd Streets (N.E. Corner)
Deepwater, MO, Co: Henry
Landholding Agency: COE
Property Number: 319011474
Status: Unutilized
Reason: Floodway.

Garage
H. S. Truman Dam and Reservoir Project
A and 3rd Streets (N.E. Corner)
Deepwater, MO, Co: Henry
Landholding Agency: COE
Property Number: 319011475
Status: Unutilized
Reason: Floodway.

Shed
H. S. Truman Dam and Reservoir Project
A and 3rd Streets (N.E. Corner)
Deepwater, MO, Co: Henry
Landholding Agency: COE
Property Number: 319011476
Status: Unutilized
Reason: Floodway.

North Dakota

Bldg. 13
VA. Medical Center
12th Street and 9th Avenue, N.W.
Minot, ND, Co: Ward
Landholding Agency: VA
Property Number: 979010073
Status: Underutilized
Reason: Other
Comment: Structure is emergency generator
shelter for Medical Center.

Bldg. 10
VA. Medical Center
12th Street and 9th Avenue, N.W.
Minot, ND, Co: Ward
Landholding Agency: VA
Property Number: 979010074
Status: Underutilized

Reason: Other
Comment: Structure is chimney for boiler
plant.

Bldg. 14
VA. Medical Center
12th Street and 9th Avenue N.W.
Minot, ND, Co: Ward
Landholding Agency: VA
Property Number: 979010075
Status: Underutilized
Reason: Other
Comment: Structure is incinerator for Medical
Center.

Bldg. 9
VA. Medical Center
12th Street and 9th Avenue, N.W.
Minot, ND, Co: Ward
Landholding Agency: VA
Property Number: 979010076
Status: Underutilized
Reason: Other
Comment: Structure is boiler plant for
Medical Center.

New Mexico
Cochiti Lake Project Office
Pena Blanca, NM, Co: Pena Blanca
Location: 30 miles from Santa Fe. 45 miles
from Albuquerque.
Landholding Agency: COE
Property Number: 319011505
Status: Underutilized
Reason: Secured Area.

Nevada
Bldg. 103-39
Hawthorne Army Ammunition Plant
Conventional Ammunition Assembly, N.Mag.
Area
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013613
Status: Unutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 292
Hawthorne Army Ammunition Plant
Officers Barracks with Dining Facility
Hawthorne, NV, Co: Mineral
Location: North side of Maine Avenue west
of Pringle Road
Landholding Agency: Army
Property Number: 219013614
Status: Unutilized
Reason: Secured Area.

Bldg. 101-2
Hawthorne Army Ammunition Plant
Group Mine Filling Plant, Central Mag. Area
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013615
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 101-3
Hawthorne Army Ammunition Plant
Group Mine Filling Plant, Central Mag. Area
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013616
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 101-4
Hawthorne Army Ammunition Plant
Group Mine Filling Plant, Central Mag. Area
Hawthorne, NV, Co: Mineral

Landholding Agency: Army
Property Number: 219013617
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 101-5
Hawthorne Army Ammunition Plant
Group Mine Filling Plant, Central Mag. Area
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013618
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 101-7
Hawthorne Army Ammunition Plant
Group Mine Filling Plant, Central Mag. Area
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013619
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 101-8
Hawthorne Army Ammunition Plant
Group Mine Filling Plant, Central Mag. Area
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013620
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 101-9
Hawthorne Army Ammunition Plant
Group Mine Filling Plant, Central Mag. Area
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013621
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 101-10
Hawthorne Army Ammunition Plant
Group Mine Filling Plant, Central Mag. Area
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013622
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 101-17
Hawthorne Army Ammunition Plant
Group Mine Filling Plant, Central Mag. Area
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013623
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 101-18
Hawthorne Army Ammunition Plant
Group Mine Filling Plant, Central Mag. Area
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013624
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 101-19
Hawthorne Army Ammunition Plant
Group Mine Filling Plant, Central Mag. Area
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013625

Group Mine Filling Plant, Central Mag. Area
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013642
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 101-69
Hawthorne Army Ammunition Plant
Group Mine Filling Plant, Central Mag. Area
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013643
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 103-5 Group
Hawthorne Army Ammunition Plant
Renovation and Demilitarization Complex
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013644
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 103-17 Group
Hawthorne Army Ammunition Plant
Renovation and Demilitarization Complex
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013645
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 103-22 Group
Hawthorne Army Ammunition Plant
Renovation and Demilitarization Complex
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013646
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 103-25 Group
Hawthorne Army Ammunition Plant
Renovation and Demilitarization Complex
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013647
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 103-34 Group
Hawthorne Army Ammunition Plant
Renovation and Demilitarization Complex
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013648
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 103-35 Group
Hawthorne Army Ammunition Plant
Renovation and Demilitarization Complex
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013649
Status: Underutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Bldg. 103-36 Group
Hawthorne Army Ammunition Plant
Renovation and Demilitarization Complex
Hawthorne, NV, Co: Mineral

Landholding Agency: Army
Property Number: 219013650
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 103-37 Group
Hawthorne Army Ammunition Plant
Renovation and Demilitarization Complex
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013651
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 103-38 Group
Hawthorne Army Ammunition Plant
Renovation and Demilitarization Complex
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013652
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 103-41 Group
Hawthorne Army Ammunition Plant
Renovation and Demilitarization Complex
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013653
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 108-1
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013654
Status: Underutilized
Reason: Secured Area.

Bldg. 108-2
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013655
Status: Underutilized
Reason: Secured Area.

Bldg. 108-3
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013656
Status: Underutilized
Reason: Secured Area.

Bldg. 108-4
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013657
Status: Underutilized
Reason: Secured Area.

Bldg. 108-5
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013658
Status: Underutilized
Reason: Secured Area.

Bldg. 108-6
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013659
Status: Underutilized
Reason: Secured Area.

Bldg. 108-7
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013660
Status: Underutilized
Reason: Secured Area.

Bldg. 108-8
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013661
Status: Underutilized
Reason: Secured Area.

Bldg. 108-9
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013662
Status: Underutilized
Reason: Secured Area.

Bldg. 108-21
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013663
Status: Underutilized
Reason: Secured Area.

Bldg. 108-22
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013664
Status: Underutilized
Reason: Secured Area.

Bldg. 108-23
Hawthorne Army Ammunition Plant
Hawthorne, NV, Co: Mineral
Landholding Agency: Army
Property Number: 219013665
Status: Underutilized
Reason: Secured Area.

Ohio

Bldg. A-1
Ravenna Army Ammunition Plant
Ravenna, OH, Co: Portage
Landholding Agency: Army
Property Number: 219013670
Status: Unutilized
Reason: Secured Area.

Bldg. 503
Ravenna Army Ammunition Plant
Ravenna, OH, Co: Portage
Landholding Agency: Army
Property Number: 219013671
Status: Unutilized
Reason: Secured Area.

Bldg. 505
Ravenna Army Ammunition Plant
Ravenna, OH, Co: Portage
Landholding Agency: Army
Property Number: 219013672
Status: Unutilized
Reason: Secured Area.

Bldg. 5022
Ravenna Army Ammunition Plant
Ravenna, OH, Co: Portage
Landholding Agency: Army
Property Number: 219013673
Status: Unutilized
Reason: Secured Area.

Bldg. V-10
Ravenna Army Ammunition Plant

Ravenna, OH, Co: Portage
Landholding Agency: Army
Property Number: 219013674
Status: Unutilized
Reason: Secured Area.

Bldg. V-3
Ravenna Army Ammunition Plant
Ravenna, OH, Co: Portage
Landholding Agency: Army
Property Number: 219013675
Status: Unutilized
Reason: Secured Area.

Bldg. V-6
Ravenna Army Ammunition Plant
Ravenna, OH, Co: Portage
Landholding Agency: Army
Property Number: 219013676
Status: Unutilized
Reason: Secured Area.

Bldg. FE 17A
Ravenna Army Ammunition Plant
Ravenna, OH, Co: Portage
Landholding Agency: Army
Property Number: 219013677
Status: Unutilized
Reason: Secured Area.

Facility 30205
Wright-Patterson Air Force Base
Greene, OH, Co: Greene
Landholding Agency: Air Force
Property Number: 189010434
Status: Unutilized
Reason: Secured Area.

Pennsylvania

C.E. Kelly Support Facility
Coraopolis Area Site 71L, S-113-Q
Ewing Mill Road
Coraopolis, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011442
Status: Excess
Base Closure
Reason: Within airport runway clear zone
Comment: Scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Coraopolis Area Site 71L, S-114Q
Ewing Mill Road
Coraopolis, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011444
Status: Excess
Base Closure
Reason: Within airport runway clear zone
Comment: Scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Coraopolis Area Site 71L, S-115-Q
Ewing Mill Road
Coraopolis, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011445
Status: Excess
Base Closure
Reason: Within airport runway clear zone
Comment: Scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Coraopolis Area Site 71L, S-116-Q
Ewing Mill Road
Coraopolis, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011446
Status: Excess
Base Closure
Reason: Within airport runway clear zone

Comment: Scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Coraopolis Area Site 71L, S-117-Q
Ewing Mill Road
Coraopolis, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011447
Status: Excess
Base Closure
Reason: Within airport runway clear zone
Comment: Scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Coraopolis Area Site 71L, S-118-Q
2038 Ewing Mill Road
Coraopolis, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011448
Status: Excess
Base Closure
Reason: Within airport runway clear zone
Comment: Scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Coraopolis Area Site 71L, S-119-Q
2038 Ewing Mill Road
Coraopolis, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011449
Status: Excess
Base Closure
Reason: Within airport runway clear zone
Comment: Scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Coraopolis Area Site 71L, S-120-Q
2038 Ewing Mill Road
Coraopolis, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011450
Status: Excess
Base Closure
Reason: Within airport runway clear zone
Comment: Scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Coraopolis Area Site 71L, S-121-Q
2038 Ewing Mill Road
Coraopolis, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011451
Status: Excess
Base Closure
Reason: Within airport runway clear zone
Comment: Scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Coraopolis Area Site 71L, S-122-Q
2038 Ewing Mill Road
Coraopolis, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011452
Status: Excess
Base Closure
Reason: Within airport runway clear zone
Comment: Scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Coraopolis Area Site 71L, S-123-Q
2038 Ewing Mill Road
Coraopolis, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011453
Status: Excess
Base Closure
Reason: Within airport runway clear zone
Comment: Scheduled to be vacated 8/15/90.

C.E. Kelly Support Facility
Coraopolis Area Site 71L, S-124-Q
2038 Ewing Mill Road

Coraopolis, PA, Co: Allegheny
Landholding Agency: COE
Property Number: 319011454
Status: Excess
Base Closure
Reason: Within airport runway clear zone
Comment: Scheduled to be vacated 8/15/90.

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project.
Defeated Creek Recreation Area
Carthage, TN, Co: Smith
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011499
Status: Unutilized
Reason: Floodway.
Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro, TN, Co: Jackson
Location: TN Highway 135
Landholding Agency: COE
Property Number: 319011503
Status: Underutilized
Reason: Floodway.

Texas

Bldg. 56756
Fort Hood
28th Street, North Fort Hood
Fort Hood, TX, Co: Coryell
Landholding Agency: Army
Property Number: 219013703
Status: Unutilized
Reason: Other
Comment: latrine, detached structure.
Bldg. 90013
Fort Hood
Clark Road, West Fort Hood
Fort Hood, TX, Co: Bell
Landholding Agency: Army
Property Number: 219013705
Status: Unutilized
Reason: Within airport runway clear zone.

Virginia

Bldg. 3045-00
Radford Army Ammunition Plant
State Highway 114
Radford, VA, Co: Montgomery
Landholding Agency: Army
Property Number: 219013559
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 3022-00
Radford Army Ammunition Plant
State Highway 114
Radford, VA, Co: Montgomery
Landholding Agency: Army
Property Number: 219013560
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 3050-00
Radford Army Ammunition Plant
State Highway 114
Radford, VA, Co: Montgomery
Landholding Agency: Army
Property Number: 219013561
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 3046-00
Radford Army Ammunition Plant
State Highway 114
Radford, VA, Co: Montgomery
Landholding Agency: Army
Property Number: 219013562
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 3007-00
Radford Army Ammunition Plant
State Highway 114
Radford, VA, Co: Montgomery
Landholding Agency: Army
Property Number: 219013563
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 3002-00
Radford Army Ammunition Plant
State Highway 114
Radford, VA, Co: Montgomery
Landholding Agency: Army
Property Number: 219013564
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 3013-00
Radford Army Ammunition Plant
State Highway 114
Radford, VA, Co: Montgomery
Landholding Agency: Army
Property Number: 219013565
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 3010-00
Radford Army Ammunition Plant
State Highway 114
Radford, VA, Co: Montgomery
Landholding Agency: Army
Property Number: 219013566
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 3019-00
Radford Army Ammunition Plant
State Highway 114
Radford, VA, Co: Montgomery
Landholding Agency: Army
Property Number: 219013567
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 4912-06
Radford Army Ammunition Plant
State Highway 114
Radford, VA, Co: Montgomery
Landholding Agency: Army
Property Number: 219013568
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 9544-00
Radford Army Ammunition Plant
State Highway 114
Radford, VA, Co: Montgomery
Landholding Agency: Army
Property Number: 219013569
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area.

Bldg. 206
Radford Army Ammunition Plant

State Highway 114
Radford, VA, Co: Montgomery
Landholding Agency: Army
Property Number: 219013570
Status: Unutilized
Reason: Within 2000 ft. of flammable or
explosive material; Secured Area.

Wisconsin

Bldg. P-10111
Fort McCoy
Army Hospital Complex
Sparta, WI, Co: Monroe
Landholding Agency: Army
Property Number: 219013443
Status: Unutilized
Reason: Other
Comment: Structure is boiler plant for
hospital.

Universe of Properties:

Total = 801
Suitable = 590
Suitable Buildings = 464
Suitable Land = 126
Unsuitable = 211
Unsuitable Buildings = 172
Unsuitable Land = 39
Number of Resubmissions = 0
[FR Doc. 90-7761 Filed 4-5-90; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Draft Environmental Assessment Proposed Pocosin Lakes National Wildlife Refuge Tyrrell, Hyde, and Washington Counties, North Carolina

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the draft environmental assessment for the proposed establishment of Pocosin Lakes National Wildlife Refuge.

SUMMARY: This Notice advises the public that the U.S. Fish and Wildlife Service, Southeast Region, proposes to establish a national wildlife refuge between the Albemarle and Pamlico Sounds in Tyrrell, Hyde, and Washington Counties, in northeastern North Carolina. The purpose of the proposal is to protect and restore wetlands and associated habitat for pocosin (shrub bog) wildlife and to protect the watershed of nearby lakes, rivers, and sounds which are utilized by a variety of fish, waterfowl, and other wildlife of the Albemarle Pamlico Peninsula. A draft Environmental Assessment has been developed in consultation with Federal, State, local, and private entities to consider the biological, environmental, and socioeconomic effects of acquiring 93,000 acres of wetlands in the area and

establishing a national wildlife refuge. The preferred alternative would allow the consolidation of the 93,000-acre proposal area with the adjacent 12,350-acre Pungo National Wildlife Refuge under the name of Pocosin Lakes National Wildlife Refuge. A 6,000± acre tract of nearby Alligator River National Wildlife Refuge in Tyrrell County would also be added to the consolidated refuge. A manager and staff independent of nearby refuges would manage the new refuge.

The consolidated refuge would be managed for its value as habitat for waterfowl, migratory songbirds, endangered plant and animal species, and the diversity of wildlife which are normally found in large pocosins. It would also be managed to protect the recreational and commercial fisheries in Lake Phelps and the Pungo, Alligator, and Scuppernon Rivers.

Written comments or recommendations concerning the proposal are welcome, and should be sent to the address below.

DATES: Land acquisition planning for the project is currently underway. The draft assessment will be available to the public on April 9, 1990. Written comments must be received no later than May 11, 1990, to be considered.

ADDRESSES: Comments and requests for copies of the assessment and further information should be addressed to either: Mr. Charles Danner, Chief, Project Development Branch, Office of Refuges and Wildlife, U.S. Fish and Wildlife Service, 75 Spring Street, SW, Room 1240, Atlanta, Georgia 30303 or Mr. Thomas Barnes, Refuge Manager, Pocosin Lakes National Wildlife Refuge (Proposed), U.S. Fish and Wildlife Service, Route 1, Box 197, Creswell, North Carolina 27928.

SUPPLEMENTARY INFORMATION: The refuge, consisting of approximately 93,000 acres of wetlands and associated habitat, is being proposed:

1. To protect and restore wetlands which will contribute to the Presidential Initiative of "No Net Loss of Wetlands;"
2. To protect the watershed of nearby lakes, rivers and estuaries which support recreational and commercial fisheries and which provide wintering habitat for Canada geese, snow geese, tundra swans, and a variety of ducks;
3. To protect production habitat for wood ducks;
4. To develop, where soil conditions permit, new habitat for wintering waterfowl;
5. To protect and enhance habitat for migratory songbirds;
6. To protect and enhance habitat for those species which are classified as

endangered, threatened, or of special concern;

7. To provide opportunities for wildlife-oriented interpretation and outdoor recreation;

8. To provide opportunities for environmental education.

These lands would come to the Fish and Wildlife Service through The Conservation Fund, a non-profit organization, in coordination with the Richard King Mellon Foundation. The Conservation Fund is the sole land landowner within the proposal area. First Colony Farms, Inc., was the former owner of these lands.

The majority of the proposal area would be classified as wetlands. The predominant vegetation type of the proposal area is southeastern shrub bog which is also known as pocosin. This type is characterized by a very dense growth of mostly broadleaf evergreen shrubs and scattered pond pine. On the proposal area, it is in various stages of growth ranging from a stage dominated by grass to one dominated by mature pond pine. Most of this habitat has been subjected to drainage of one degree or another. White-tailed deer, bobcat, gray fox, raccoon, and opossum are found throughout the shrub bog community, whereas river otter, mink, and muskrat are restricted to suitable aquatic areas within pocosins.

A number of animals are characteristic of the larger pocosins. Included in this category would be the spotted turtle, and the black bear. A bear population is known to occur on the eastern portions of the proposal area. Bears have also been occasionally observed in the severely modified western area.

The North Carolina Natural Heritage Program has identified three areas of pocosin in Tyrrell and Hyde Counties as potential natural areas. These are as follows:

1. Upper Alligator River Pocosin—29,793 acres (26,000± acres in proposal area)
2. Harvester Road Tall Pocosin—7,989 acres (7,000± acres in proposal area)
3. New Lake Fork Pocosin—9,300 acres (7,100± acres in proposal area)

One of the three areas of pocosin in Tyrrell and Hyde Counties, the Upper Alligator River Pocosin, has been evaluated as the best of the unmodified or only slightly modified pocosins on the Albemarle Pamlico Peninsula.

The proposal areas also includes 2,175 acres in eight tracts on or near the Scuppernon River or its tributaries. Most of this acreage consists of a bottomland hardwood forest, a few stands of loblolly pine, and at least one

Atlantic white cedar stand. The dominant species of the bottomland hardwood forest are blackgum and Carolina ash with smaller components of red maple, water tupelo, loblolly pine, an bald cypress. Most of the acreage in the Scuppernon tracts is in one of the potential natural areas designated by the North Carolina Natural Heritage Program.

There are 400± acres of marsh along the Alligator River. This is part of a 971-acre marsh dominated by cattail which was designated as a potential natural area by the North Carolina Natural Heritage Program. There are also approximately 4,100± acres of open water and mud flats on New Lake and a disputed 1,200± acres of open water and shore in the southern part of Lake Phelps.

The Environmental Assessment was developed by the Service in consultation with representatives from the North Carolina Department of Environment, Health, and Natural Resources (Division of Forest Resources and Division of Parks and Recreation), Ducks Unlimited, the North Carolina Nature Conservancy, Tidewater Research Station, The Conservation Fund, the Soil Conservation Service and County managers. In the assessment, four alternatives and their potential impact on the environment are evaluated. The Service believes the preferred alternative, "Acquisition by the Service of the Proposal Area; Consolidation with Pungo National Wildlife Refuge and Management as an Independent Refuge," will maximize habitat values and management for migratory birds, endangered plant and animal species, an other fish and wildlife species in the Pocosin lakes area.

Dated: March 29, 1990.

David B. Allen,

Acting Regional Director.

[FR Doc. 90-8301 Filed 4-5-90; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercompany Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

Campbell Soup Company
Campbell Place

Camden, New Jersey 08101

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation are as follows:

Corporate name	State of incorporation
Beach Haven Foods, Inc.....	Pennsylvania
CIRT Urban Renewal corp.....	New Jersey
CSC Advertising, Inc.....	New Jersey
Campbell Finance Corp.....	Delaware
Campbell Investment Company.....	Delaware
Campbell Sales Company.....	New Jersey
Campbell Soup (Texas), Inc.....	Texas
Campbell Soup Company.....	New Jersey
Campbell World Trading Company Inc.....	New York
Campbell's Fresh, Inc.....	Ohio
Casera Foods, Inc.....	Delaware
Caserta Enterprises, Inc.....	Florida
Domsea Farms, Inc.....	Washington
Godiva Chocolatier, Inc.....	New Jersey
Gourmet Collection, Inc.....	Pennsylvania
Herder Farms, Inc.....	Texas
Joseph Campbell Company.....	New Jersey
Juice Bowl Products, Inc.....	Florida
Martino's Bakery, Inc.....	California
Mrs. Paul's Kitchens, Inc.....	Pennsylvania
Pepperidge Farm Mail Order Company, Inc.....	Connecticut
Pepperidge Farm, Inc.....	Connecticut
Produce Partners, Inc.....	Illinois
Vlasic Foods, Inc.....	Michigan

Noreta R. McGee,

Secretary.

[FR Doc. 90-7935 Filed 4-5-90; 8:45 am]

BILLING CODE 7035-01-M

Motor Passenger Carrier or Water Carrier Finance Applications

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties of, or acquire control of motor passenger carriers or water carriers pursuant to 49 U.S.C. 11343-11344. The applications are governed by 49 CFR part 1182, as revised in *Pur., Merger & Cont.—Motor Passenger & Water Carriers*, 5 I.C.C. 2d 786 (1989). The findings for these applications are set forth at 49 CFR 1182.18. Persons wishing to oppose an application must follow the rules under 49 CFR part 1182, subpart B. If no one timely opposes the application, this publication automatically will become the final action of the Commission.

MC-F-19602, filed March 6, 1990.
FRANK TEDESCO—CONTINUANCE IN CONTROL EXEMPTION—BODY RITE REPAIR COMPANY, INC. AND INNER CIRCLE QONEXIONS, INC.
Applicant's representative: Sidney J. Leshin, 300 Madison Ave., New York, NY 10017. Applicant Frank Tedesco, a noncarrier individual, seeks approval for

his continuance in control of Body Rite Repair Company, Inc., a new carrier seeking initial charter and special operations authority in No. MC-218783, and Inner Circle Qonexions, Inc. (MC-145482), a carrier holding charter and special operations authority. With prior Commission approval, Frank Tedesco already controls (with his wife, Josephine Tedesco):

(1) Academy Bus Tours, Inc. (MC-165004), a carrier with charter and special operations authority and a contract carrier of passengers;

(2) Academy Lines, Inc. (MC-1067), a regular-route carrier of passengers between points in New Jersey and New York, NY; and

(3) Commuter Bus Line, Inc. (MC-162133), a regular-route carrier of passengers between points in Staten Island, NY and New York, NY, and a contract carrier of passengers.

Decided: April 2, 1990.

By the Commission, the Motor Carrier Board.

Noreta R. McGee,

Secretary.

[FR Doc. 90-8026 Filed 4-5-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31624]

Consolidated Rail Corp.—Trackage Rights Exemption—Buffalo & Pittsburgh Railroad, Inc., Exemption

Buffalo & Pittsburgh Railroad, Inc. (BPR), as agreed to grant overhead trackage rights to Consolidated Rail Corporation (Conrail) between milepost 19.4 (CB Junction, PA) and approximately milepost 18.0 (the point of connection with a private sidetrack of North American Refractories Co. at Curwensville, PA), a distance of about 1.4 miles. The trackage rights were to have become effective on March 22, 1990, or on such later date as BPR and Conrail may agree in writing.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John J. Paylor, Consolidated Rail Corporation, 1138 Six Penn Center, Philadelphia, PA 19103.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino*

Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: April 2, 1990.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-7936 Filed 4-5-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31626]

**Great Walton Railroad Co., d/b/a
Hartwell Railroad Co.—Trackage
Rights Exemption—Hartwell Railway
Co.; Exemption**

Hartwell Railway Company has agreed to grant local trackage rights to Great Walton Railroad Company, doing business as Hartwell Railroad Company, between milepost 0.0, at Bowersville, GA, and milepost 10.5, at Hartwell, GA. The trackage rights were to become effective on March 21, 1990.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John R. Molm, Candler Building, Suite 1400, 127 Peachtree Street, NE., Atlanta, GA 30303-1810.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: April 2, 1990.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-7937 Filed 4-6-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31615]

**Tradewater Railway Co.—Trackage
Rights Exemption—CSX
Transportation, Inc.; Exemption**

Decided: April 2, 1990.

CSX Transportation, Inc. (CSXT), has agreed to grant local and overhead trackage rights to Tradewater Railway Company (TWRY) between milepost 290.78, at Providence, KY, and milepost 294, at Diamond Junction, KY, a distance of 3.22 miles. The trackage rights were to become effective on the effective date of this notice or on the effective date of the

trackage rights agreement between TWRY and CSXT, whichever is later.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Frank J. Pergolizzi, Slover & Loftus, 1224 17th Street, NW., Washington, DC 20036.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-8025 Filed 4-5-90; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31620]

**Carolina Rail Services Co.—
Acquisition and Operation
Exemption—Carolina Rail Services,
Inc.; Exemption**

Carolina Rail Services Company (CRSC) has filed a notice of exemption to acquire the terminal switching operations formerly conducted by Carolina Rail Services, Inc. (CRS), at Morehead City, NC, and certain incidental trackage rights, over a line of the North Carolina Ports Railway Commission, an agency of the State of North Carolina.¹ The line extends between the former Atlantic & East Carolina Railway milepost 94.1 (Western boundary) and milepost 94.5 (Eastern boundary), a distance of approximately one mile.

Any comments must be filed with the Commission and served on Michael A. Nemeroff, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: April 2, 1990.

¹ CRSC is a partnership consisting of CRS (which no longer operates as a carrier as a result of the transaction here) and Canal Wood Corporation, a noncarrier.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 90-8105 Filed 4-5-90; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

**Business Research Advisory Council;
Meetings and Agenda**

The regular Spring meetings of the Board and Committees of the Business Research Advisory Council will be held on April 25 and 26, 1990. All of the meetings will be held in the General Accounting Office Building, 441 G Street NW., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday, April 25, 1990

10 a.m.—Committee on Compensation and Working Conditions (formerly Wages and Industrial Relations).
Room 2736

1. Federal White Collar Pay Reform: proposed legislation and impact on White Collar Pay and Benefits Survey
2. Development of Employee Cost Levels by employment size class
3. Other business

10 a.m.—Committee on Price Indexes
Room 2734

To be announced.

1:30 p.m.—Committee on Productivity/
Foreign Labor Room 2736

1. The Bureau's East European Program
2. Recent International Comparisons Work
3. New developments in the Multifactor Productivity Measurement Program
4. Impact of R&D on productivity growth: direct and indirect effects

Thursday, April 26, 1990

9:30 a.m.—Committee on Employment and Unemployment Room 2734

1. Reflections on the Polish Labor Market Information System.
2. Reports
 - a. Dual Jobholding Study
 - b. Occupational Employment Statistics (OES) Wage Survey
3. Focus Group—Job Vacancy Survey

4. Other business
 9:30 a.m.—Committee on Occupational Safety and Health Statistics, Room 2736

1. 1989 pilots—pilot V evaluation
 2. 1990 pilots—current plans
 3. 1990 fatality pilots—status report
 4. Guidelines revision—status report
 5. Budget update—FY 1990 FY 1991
 6. State Advisory Committee
 7. Supplementary Data System—status report
 8. Work Injury Reports—status report
- 1 p.m.—Board of the Business Research Advisory Council Room 2736
1. Chairperson's opening remarks
 2. Commissioner's remarks
 3. Committee reports
 - a. Compensation and Working Conditions
 - b. Price Indexes
 - c. Productivity/Foreign Labor
 - d. Employment and Unemployment
 - e. Occupational Safety and Health Statistics
 4. Other business
 5. Chairperson's closing remarks.

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Janice D. Murphey, Liaison, Business Research Advisory Council on Area code (202) 523-1346.

Signed at Washington, DC, the 28th day of March 1990.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 90-7907 Filed 4-5-90; 8:45 am]

BILLING CODE 4510-24-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of

the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration,

Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by volume, state and page number(s).

Volume II

Iowa:	
IA90-12.....	p.56c, p.56d.
Michigan:	
MI90-19.....	p.544c, p.544d.
Texas:	
TX90-62.....	p.1156g, p.1156h.

Volume III

Wyoming:	
WY90-4.....	p.433, p.454.

Modification to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Delaware:	
DE90-2 (Jan. 5, 1990).....	p.95, pp.96-97.
Florida:	
FL90-12 (Jan. 5, 1990).....	p.129, p.130.
FL90-15 (Jan. 5, 1990).....	p.137, p.138.
FL90-17 (Jan. 5, 1990).....	p.143, p.144.
New Hampshire:	
NH90-2 (Jan. 5, 1990).....	p.643, p.644.
Pennsylvania:	
PA90-5 (Jan. 5, 1990).....	p.951, pp.952-963.
PA90-26 (Jan. 5, 1990).....	p.1093, p.1094.
Tennessee:	
TN90-4 (Jan. 5, 1990).....	p.1169, p.1170.
Virginia:	
VA90-30 (Jan. 5, 1990).....	p.1287, p.1288.
West Virginia:	
WV90-2 (Jan. 5, 1990).....	p.1391, pp.1392, 1397, pp.1398, 1401.
WV90-3 (Jan. 5, 1990).....	p.1415, p.1416.

Volume II

Missouri:	
MO90-1 (Jan. 5, 1990).....	p.627, p.630.
Nebraska:	
NE90-1 (Jan. 5, 1990).....	p.717, p.718.

NE90-2 (Jan. 5, 1990)	p.721, p.722.
NE90-3 (Jan. 5, 1990)	p.725, p.726.
NE90-4 (Jan. 5, 1990)	p.729.
NEDE90-5 (Jan. 5, 1990)	p.731, p.732.
NE90-9 (Jan. 5, 1990)	p.739, p.740.
NE90-10 (Jan. 5, 1990)	p.741, p.742.
NE90-11 (Jan. 5, 1990)	p.743, p.744.
Ohio:	
OH90-2 (Jan. 5, 1990)	p.791, pp.793-795, 799, pp.800, 804, 805.
Wisconsin:	
WI90-17 (Jan. 5, 1990)	p.1243.
<i>Volume III</i>	
Alaska:	
AK90-1 (Jan. 5, 1990)	p.1, pp.2-3.
Hawaii:	
HI90-1 (Jan. 5, 1990)	p.137, pp.138-145.
Idaho:	
ID90-1 (Jan. 5, 1990)	p.147, pp.150, 154-156.
Oregon:	
OR90-1 (Jan. 5, 1990)	p.309, pp.312-313, 318.
Utah:	
UT90-1 (Jan. 5, 1990)	p.343, p.344.
Washington:	
WA90-2 (Jan. 5, 1990)	p.395, pp.396-397.
WA90-6 (Jan. 5, 1990)	p.417, p.418.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50

Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 30th day of March 1990.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 90-7745 Filed 4-5-90; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment

and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 16, 1990.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 16, 1990.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 26th day of March 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
(The) Ackerman Co. (Workers)	Ackerman, MS	3/26/90	3/05/90	24,170	Ladies' pants.
Aris Fashions, Inc. (Company)	Newark, NJ	3/26/90	3/12/90	24,172	Ladies' coats.
Anchor Fasteners Div. (Workers)	Waterbury, CT	3/26/90	3/12/90	24,172	Auto fasteners.
Besly Products Corp. (UE)	Greenfield, MA	3/26/90	3/15/90	24,173	Machine tools.
Chester Sportswear, Co. (Workers)	Chester, SC	3/26/90	3/12/90	24,174	Men's dress shirts.
Cricketeer Mfg., Co. (Workers)	Harrodsburg, KY	3/26/90	3/02/90	24,175	Men's coats.
Diebold, Inc. Boilermakers)	Canton, OH	3/26/90	3/21/90	24,176	Bank security products.
Electro Scientific Industries (Workers)	Portland, OR	3/26/90	3/12/90	24,177	Laser trimming equipment.
Felice Fashions (Company)	Newark, NJ	3/26/90	3/09/90	24,178	Ladies' coats.
Galeton Production Co. (Workers)	Galeton, PA	3/26/90	3/09/90	24,179	Camera equipment.
Harris Graphics Corp. (Company)	Dover, NH	3/26/90	2/27/90	24,180	Printing presses.
Health-Tex, Inc. (Company)	Centerville, AL	3/26/90	3/14/90	24,181	Childrens' clothing.
Do	Warrenton, GA	3/26/90	3/14/90	24,182	Do.
Do	Charlotte, NC	3/26/90	3/14/90	24,183	Do.
James-River Mass. (UPIU)	Fitchburg, MA	3/26/90	3/16/90	24,184	Paper.
Jersey Made Fashions (ILGWU)	Hoboken, NJ	3/26/90	3/01/90	24,185	Coats and suits.
Lady Hope (Workers)	Kulpmont, PA	3/26/90	3/08/90	24,186	Ladies' sportswear.
Lynden Transport, Inc. (Company)	Broussard, LA	3/26/90	3/08/90	24,187	Oilfield equipment.
Peterson Spring, Co. (Workers)	Madison, Hts. MI	3/26/90	3/12/90	24,188	Auto springs.
Raymar, Inc. (Company)	Newark, NJ	3/26/90	3/12/90	24,189	Ladies coats.
Simpson Industries-Litchfield Operations	Litchfield, MI	3/26/90	3/10/90	24,190	Auto parts.
Sprague Electronic Co. (Workers)	Willow Grove, PA	3/26/90	2/21/90	24,191	Electronic components.
Stelwood, Inc. (Workers)	Harriman, TN	3/26/90	3/13/90	24,192	Sportswear.
Stelwood, Inc. (Workers)	Rockwood, TN	3/26/90	3/13/90	24,193	Do.
Takata/Gateway, Inc. (Workers)	Michigan City, IN	3/26/90	3/16/90	24,194	Seat belts.

APPENDIX—Continued

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
(The) Timken Co. (USWA)	Canton, OH	3/26/90	3/13/90	24,195	Bearings.
Thorn EMI Electron (Company)	Fairfield, NJ	3/26/90	3/13/90	24,196	Electronic tubes.
United Technologies Automotive Inc. (Workers)	Zanesville, OH	3/26/90	3/13/90	24,197	Wire harnesses.
William Prym, Inc. (ACTWU)	Dayville, CT	3/26/90	3/15/90	24,198	Pins and fasteners.

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of March 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-23,843; Heath Co., St. Joseph, MI
 TA-W-23,763; Norbalt Rubber Corp., North Baltimore, OH
 TA-W-23,814; Nu-Dor, Inc., Lacey, WA
 TA-W-23,822; Seacraft Instrument, Inc., Batavia, NY
 TA-W-23,811; Nico Fashions, Inc., Jersey City, NJ
 TA-W-23,875; Harriman Hosiery Co., Div of Kayser Roth Corp., Harriman, TN
 TA-W-23,850; MAAS & Waldstein Co., Newark, NJ
 TA-W-23,889; Tektronix, Inc., Forest Grove, OR
 TA-W-23,890; Trent Tube, East Troy, WI
 TA-W-23,868; Barnes Group-Associated Spring, Corry, PA
 TA-W-23,886; Raymond Merchandise, Corry, PA

TA-W-23,881; Navistar International, Waukesha, WI
 TA-W-23,848; Lincoln Lace & Braid Co., Providence, RI
 TA-W-23,891; UMETCO Minerals Corp., Blanding UT & Westin, CO

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-23,870; Cole Apparel, Crawford, TN

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,907; Gulfstream Aerospace Technologies, Inc., Oklahoma City, OK

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,816; Performance Associates, Inc., Cincinnati, OH

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,835; Chem Frac, Inc., Ada, OK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,874; General Motors Corp., BOC Linden, Linden, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,884; Presidio Exploration, Inc., Dallas, TX

The investigation revealed that criterion (2) has not been met. Sales of production did not decline during the relevant period as required for certification.

TA-W-23,893; Walker Bros. Drilling Co., Inc., Konawa, OK

The investigation revealed that criterion (2) has not been met. Sales of production did not decline during the relevant period as required for certification.

TA-W-23,901; AT&T Network System Manufacturing Development Center Engineering Research Center, Hopewell Township, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,837; Clifford Industries, Inc., Winfield, AL

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,832; American Cyanamid Co., Marietta, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,790; Howton Manufacturing Corp., Elizabeth, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,877; International Drilling Fluids, Inc., Denver, CO

U.S. imports of bentonite, the basic constituent of drilling mud are negligible.

TA-W-23,896; Westex Production Service, Compton, CA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,897; Westex Production Service, Andrews, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,898; Westex Production Service, Seminole, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,899; Westex Production Service, Odessa, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-23,895; Warwick Company, Chesapeake, VA

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,867; Wool Fashions, Inc., Hoboken, NJ

Increased imports did not contribute importantly to workers separations at the firm.

TA-W-23,841; TA-W-23,842; Gordon Ferguson of Delaware, Plymouth, MN and Bruce, WI

Increased imports did not contribute importantly to workers separations at the firm.

Affirmative Determinations

TA-W-23,894; Warner Electric Roscoe, IL

A certification was issued covering all workers engaged in the production of electric clutches for automobile air conditioners compressors separated on or after January 12, 1989.

TA-W-23,912; Sherico Cedar Products, Forks, WA

A certification was issued covering all workers separated on or after December 1, 1989.

TA-W-23,856; Rutledge & Salmon, Inc., Chickasha, OK

A certification was issued covering all workers separated on or after December 18, 1988 and before December 31, 1989.

TA-W-23,794; Jewel Fashions, West New York, NJ

A certification was issued covering all workers separated on or after December 1, 1988.

TA-W-23,866; Western Kansas Drilling, Hays, KS

A certification was issued covering all workers separated on or after March 1, 1989.

TA-W-23,983; Levi Strauss & Co. San Antonio, TX

A certification was issued covering all workers separated on or after December 1, 1988.

TA-W-23,869; Clifford Resources, Inc., Oklahoma City, OK

A certification was issued covering all workers separated on or after January 10, 1989.

TA-W-23,872; Flag-Redfern Oil Co., Midland, TX

A certification was issued covering all workers separated on or after December 28, 1988.

TA-W-23,888; Absorbent Cotton Co., Valley Park, ME

A certification was issued covering all workers separated on or after January 8, 1989.

TA-W-23,776; TMBR/Sharp Drilling Co., Inc., Covering Locations Throughout The State of New Mexico

A certification was issued covering all workers separated on or after November 2, 1988 and before November 21, 1990.

TA-W-23,847; Leviton Manufacturing Co., Inc., Warwick, RI

A certification was issued covering all workers separated on or after January 4, 1989 and before March 1, 1990.

TA-W-23,851; Mel Coat, Weehawken, NJ

A certification was issued covering all workers separated on or after November 16, 1986.

TA-W-23,844; Hollywood Shake Co., Inc., Forks, WA

A certification was issued covering all workers separated on or after December 11, 1988.

TA-W-23,944; Knapp Shoe, Brockton, MA

A certification was issued covering all workers separated on or after November 1, 1988.

TA-W-23,862; Twenty First Century Casting Corp., Mexico, MO

A certification was issued covering all workers separated on or after June 1, 1989.

TA-W-23,787; Giulien Apparel, Jeannette, PA

A certification was issued covering all workers separated on or after December 21, 1988.

TA-W-23,865; Vinisa Fashions, Inc., Hoboken, NJ

A certification was issued covering all workers separated on or after December 1, 1988.

TA-W-21,502; Zapata Offshore Co., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,404; Chromalloy Drilling Fluids, Laredo, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,453; Maverick Drilling, Inc., Austin, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,453A; Maverick Drilling, Inc., All Locations in The State of Texas

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,471; Precision Lease Service, Inc., Carrizo Springs, TX

A certification was issued covering all workers separated on or after October 1, 1985 and before January 1, 1987.

TA-W-21,444; Landis Drilling Co., Midland, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,370; Midland Mud, Inc., Hays, KS

A certification was issued covering all workers separated on or after January 1, 1986 and before January 1, 1988.

TA-W-21,269; Great West Operating Co., Inc., Dallas, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,447; Mayfield Co., Eunice, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,447A; Mayfield Co., Ville Platte, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,755; Schlumberger Well Services Mt Pleasant, MI

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,437; JFP Energy, Inc., Houston, TX

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,388; The Western Co of North America, Victoria, TX Various Locations In The Following States

TA-W-21,388A Fort Worth, TX

TA-W-21,388B AR

TA-W-21,388C CO

TA-W-21,388D PA

TA-W-21,388E LA

TA-W-21,388F MS

TA-W-21,388G NM

TA-W-21,388H OK
TA-W-21,388I TX
TA-W-21,388J UT

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-21,436; Huthnance Offshore Corp., New Iberia, LA

A certification was issued covering all workers separated on or after October 1, 1985.

TA-W-23,773; M.C.M. Co., Inc. Hoboken, NJ

A certification was issued covering all workers separated on or after December 1, 1988.

I hereby certify that the aforementioned determinations were issued during the month of March 1990. Copies of these determinations are available for inspection in room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons to write to the above address.

Dated: March 30 1990.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-8016 Filed 4-5-90; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D-8196 et al.]

Proposed Exemptions; Innovation Industries, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in pending exemption.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension

and Welfare Benefits Administration, Office of Exemption Determinations, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice of Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the *Federal Register*. Such notice shall include a copy of the notice of pendency of the exemption as published in the *Federal Register* and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Innovation Industries, Inc., Profit Sharing Plan (the Plan), Located in Russellville, Arkansas

[Application No. D-8196]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the

application of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain securities (the Securities) to Innovation Industries, Inc. (the Employer), the sponsor of the Plan; provided that the Plan receives an amount which is the greater of either the Plan's original acquisition cost, or the fair market value of the Securities on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which, as of September 30, 1988, had 80 participants and total net assets of \$467,028. The current trustee of the Plan is the First National Bank of Russellville, Arkansas. Ms. Zolla Horney (Ms. Horney) and Mr. Edgar Powell (Mr. Powell) were the trustees of the Plan until April 1989. Ms. Horney is the president of the Employer and owns 50.5% of the issued and outstanding stock of the Employer. Mr. Powell owns 49.5% of the Employer's stock.

2. The Securities owned by the Plan consist of: (1) 4,205,557 shares of Sierra Capital Trust 84, a real estate investment trust (Sierra); (2) 80 units of Public Storage Properties XIV, Ltd. (Public); (3) 204.8 units of Southmark Income Investors, Ltd., a limited partnership investing in mortgage loans and real estate (Southmark); (4) nonrecourse bonds issued by Reddington/Willow Creek, an Arizona limited partnership (R/W Creek); and (5) 125,000 shares of the issued and outstanding common stock of Richland Chambers Investment Company (Richland Chambers). The applicant represents that the Securities were all purchased from independent third parties.

3. A report dated October 31, 1989, from Fred Robeson, Jr., an independent certified financial planner and a second vice president with Shearson, Lehman, Hutton, placed a current value on the Plan's interests in Sierra, Public, Southmark and R/W Creek. Mr. Robeson utilized two methods in obtaining a value for the Securities. With regard to the Sierra shares which are publicly traded on the NASDAQ, he obtained the most recent quoted price. With regard to the non-publicly traded Securities, with the exception of Richland Chambers, Mr. Robeson contacted six of the largest and most active investment firms in the area of trading limited partnership units of the type held by the Plan, in an effort to obtain current values for these Securities. Mr. Robeson also represents that limited partnership investments are generally considered illiquid

investments and that the prospectus for the particular limited partnerships discussed the lack of a formal secondary market.

4. On November 28, 1984, the Plan purchased 3,500 Sierra shares for \$35,000. The applicant represents that dividends have been automatically reinvested in additional shares and as of October 31, 1989, the Plan held 4,205,557 Sierra shares. Sierra is a real estate investment trust which owns six commercial properties in the Los Angeles area consisting of shopping centers and warehouse/distribution centers. Sierra is publicly traded on the NASDAQ, and as of October 31, 1989, it traded at a price of \$3.50. As of October 31, 1989, the 4,205,557 shares held by the Plan had a market value of \$14,719.45.

5. On November 28, 1984, the Plan purchased 80 limited partnership units in Public for \$40,000. Public invests in self-storage properties located in several states. Mr. Robeson states that as of October 26, 1989, the best price for the Plan's 80 units was offered by Investors Liquidity Financial, a firm involved in the purchase and sale of units in limited partnerships. The bid was for \$320-\$325 per unit, less a \$15.00 transfer fee, for a total net price of \$25,985.

6. On November 28, 1984, the Plan purchased 204.8 units in Southmark for \$100,000. Southmark is a limited partnership which invests in mortgage loans and real estate. The Southmark units were purchased and held for possible appreciation, but since acquisition these units have depreciated in value. Mr. Robeson maintains that Southmark currently owns six second mortgage loans, of which one is in default. Although the parent company, Southmark Corp., is in bankruptcy, the partnership is not. Mr. Robeson represents that as of November 21, 1989, the best price for the Plan's 204.8 units of Southmark was offered by Investors Liquidity Financial. The bid was for \$100 per unit for the Plan's 204.8 units, less a \$150 transfer fee, for a total net price of \$20,330.

7. On December 3, 1984, the Plan purchased nonrecourse bonds issued by R/W Creek for \$56,000. R/W Creek is an Arizona limited partnership, organized for the purpose of purchasing, operating and holding for investment the Willow Creek shopping center located in Prescott, Arizona. Mr. Robeson represents that the Plan's interest is that of a second or third deed of trust, with a stated interest rate of 9%, with a 14% maximum annual rate possible, provided certain conditions are met. Mr. Robeson explains that it was expected when the investment was made that the

additional 5% interest would be paid at a time when the underlying shopping center was sold or refinanced. However, the interest payments are now in default, and the partnership filed for chapter 11 bankruptcy protection on May 1, 1989. As a result, Mr. Robeson concludes that there is presently no known market for these units, and he considers them worthless.

8. On October 29, 1986, the Plan purchased 125,000 shares of the issued and outstanding common stock in Richland Chambers for \$50,000. Richland Chambers is a corporation developing recreational real estate in central Texas. D. Bruce Andrews (Mr. Andrews), an independent CPA with Baird, Kurtz and Dobson accounting firm, states that this investment is a minority interest in a closely held land development company in Texas, and that the 1988 financial statements of the company show losses accumulating from inception. Accordingly, Mr. Andrews believes that given the circumstances and the lack of available information on the Richland Chambers stock, it would be appropriate to estimate that its fair market value would be near zero.

9. The applicant represents that the sale of the Securities described above by the Plan to the Employer would be in the best interest and protective of the Plan. The Securities constitute undesirable investments for the Plan based upon the respective depreciations and small income yields. In this regard, the applicant proposes to purchase the Securities from the Plan for their total initial acquisition cost of \$287,517. Because the Securities comprise approximately 62% of the Plan's total assets, the transaction will enable the Plan to diversify its investment portfolio and to invest in other instruments with a higher yield. The applicant represents that the amount received by the Plan as a result of the subject transactions will be treated as an employer contribution to the Plan and this contribution will not disqualify the Plan under section 415 of the Internal Revenue Code. The transaction will be a one-time cash sale and the Plan will bear no expenses associated with the sale.

10. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The sale will be one-time cash transactions;

(b) The sale will allow the Plan to divest itself of essentially non-income producing Securities that have depreciated in value;

(c) The fair market value of the Securities was determined by independent qualified parties; and

(d) The Plan will pay no expenses associated with the transactions and the sale price will be the greater of \$287,517 or the fair market value of the Securities at the time of the sale.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT:

Ekaterina A. Uzlyan of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Associated Dermatologist, Ltd.

Employee Pension Benefit Plan and Trust (the Profit Sharing Plan) and Associated Dermatologist, Ltd.

Employee Benefit Plan and Trust (the Money Purchase Plan) [collectively, the Plans]

Located in Springfield, Missouri

[Application No. D-8219]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of nine (9) diamonds (the Diamonds) and thirty-two (32) gold coins (the Coins) by the Plans to Ernest Lorenc, M.D. (Dr. Lorenc), a party in interest with respect to the Plan; provided that the purchase price of the Diamonds and the Coins is their fair market value on the date of the Sale.

Summary of Facts and Representations

1. The Plans consist of a profit sharing plan and a money purchase plan with total assets of \$1,987,846.36, as of September 30, 1989. The assets of the Plans are held in a commingled trust with \$1,064,886.64 allocated to the Profit

Sharing Plan and \$992,959.72 allocated to the Money Purchase Plan. These assets include corporate stocks and bonds, real property, coins, diamonds, and cash equivalents. There are five participants in each of the Plans. The Plans provide each participant with an individually directed, segregated account. In addition to Dr. Lorenc, the fiduciaries of the Plans include Douglas A. Huewe, M.D. and N. Eugene Morrow, M.D. Each of the fiduciaries is a 25 percent shareholder of Associates Dermatologists, Ltd., a Missouri corporation, which sponsors the Plans.

2. The applicant represents that the segregated account in the Plans maintained for Dr. Lorenc had assets totalling \$781,140.11, as of September 30, 1989. In addition to cash equivalents, corporate stocks and bonds, and real property, the segregated account for Dr. Lorenc had the Coins and Diamonds.

During 1980 and 1981, the Coins were purchased at the retail fair market price of \$45,263 and during 1976 through 1978, the Diamonds were purchased at the retail fair market price of \$47,602.¹ All purchases were made from unrelated parties with respect to the Plans and their participants and beneficiaries.

The Coins were determined to have a retail fair market value of \$41,245, as of January 10, 1990, by an independent appraiser, Charles E. Hayes of Charles E. Hayes Rare Coins, located in Springfield, Missouri. The Diamonds were determined to have a retail fair market value of \$73,525, as of January 10, 1990, by an independent appraiser, Woody Justice, a graduate gemologist with Justice Jewelers, located in Springfield, Missouri.² As of September 30, 1989, the Coins represent approximately 5.3 percent of the total assets in Dr. Lorenc's segregated account and the Diamonds represent approximately 9.4 percent.

3. Dr. Lorenc proposes to purchase for cash, from his segregated account, the Coins and Diamonds at their retail fair market value, as determined by an independent appraiser on the date of the Sale. No expenses or commissions will be incurred by the Plans from the proposed Sale. It is represented that the Coins and Diamonds are currently held

¹ The purchases of the Coins and Diamonds were made prior to the effective date of section 408(m) of the Code which provides that "the acquisition by * * * an individually-directed account under a plan described in section 401(a) of any collectible shall be treated * * * as a distribution from such account in an amount equal to the cost to such account of such collectible."

² The appraisers determined on January 10, 1990, that the wholesale fair market value of the Coins and Diamonds were substantially less than the amount expended when purchasing them.

and have been continuously held since their acquisition in a safety deposit box of the fiduciaries of the Plans. It is further represented that the Coins and Diamonds have never been used for personal purposes. The expense of maintaining the safety deposit box has been paid by the sponsor of the Plans and not by the Plans. The two independent appraisers substantiate the applicant's contention that it would be unlikely that the Plans could sell the Coins or Diamonds to the public for the retail fair market value.

4. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The proposed Sale will be a one-time transaction for cash; (b) the Plans will receive the retail fair market value of the Coins and the Diamonds as determined by a qualified, independent appraiser; (c) the Plans will not pay any commission, fees, or other expenses involved in the Sale; (d) the cash proceeds from the Sale will further the liquidity of Dr. Lorenc's segregated account in the Plans; and (e) the applicant, who is the only participant affected by the proposed transaction, desires that the Sale be consummated.

Notice to Interested Persons

Since the individual account in the Plans for Dr. Lorenc is the sole account affected by the proposed transaction, it has been determined that there is no need to distribute the notice of the proposed exemption to interested persons. Comments and requests for a hearing are due 30 days after publication of this notice in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Retirement Savings Plan for Employees of Boh Corporation and Participating Subsidiaries and Affiliates (the Plan) Located in New Orleans, LA

[Application No. D-8275].

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply

to the proposed cash sale by the Plan of a first mortgage note (the Note) to Boh Corporation (the Employer), a party in interest with respect to the Plan, provided the Plan receives an amount representing the greater of the outstanding principal balance of the Note plus all accrued interest as of the date of the sale or the fair market value of the Note at the time the transaction is consummated.

Summary of Facts and Representations

1. The Plan is a retirement savings plan with a 401(k) feature. The Plan provides retirement benefits to employees of the Employer and to employees of the Employer's affiliates. As of August 31, 1989, the Plan had total assets having a fair market value of \$14,145,524. As of October 3, 1989, the Plan had 298 participants. The trustee of the Plan and the decisionmaker with respect to Plan investments is Hibernia National Bank of New Orleans, Louisiana. The Employer, which is located at 730 S. Tonti Street, New Orleans, Louisiana, is a holding company with several subsidiary corporations. Its principal subsidiary, Boh Brothers Construction Company, Inc., is engaged in the construction business.

2. Among the assets of the Plan is a first mortgage note. The Note is dated March 7, 1988 and it is in the original principal amount of \$750,000. The Note bears interest on the unpaid principal balance at the rate of 8 percent per annum from the date of execution until it is fully paid. The Note is payable in 71 equal monthly installments of \$10,602 which commenced on April 7, 1988 and on the same day of each subsequent month thereafter. The remaining unpaid principal balance of the Note and all accrued interest thereon will become due and payable on March 7, 1994.

3. The Note was executed by the Plan and Philmat, Inc. (Philmat), an unrelated entity, pursuant to an act of sale (the Act of Sale) between the Plan and Philmat dated March 7, 1988. The Act of Sale related to a parcel of improved real property (the Property) then owned by the Plan. The Property is located at 5600 Hayne Boulevard, New Orleans, Louisiana. It consists of a parcel of land and a warehouse building that is situated thereon. The Plan acquired the Property on July 24, 1970 for the cash purchase price of \$109,012 from Lake Forest, Inc., an unrelated entity. At the time of its sale Philmat, the Property was not encumbered by a mortgage. Also during the time of its ownership by the Plan, the Property was leased to unrelated parties. However, for periods in which the Property was vacant, the

applicant represents that the Property was not used by or leased to parties in interest.

4. According to the terms of the Act of Sale, the purchase price for the Property was established at \$900,000. Philmat made a cash downpayment to the Plan of \$150,000 and executed the Note in the amount of \$750,000. An independent appraiser, Mr. Robley J. Gelphi, Jr. (Mr. Gelphi), S.R.P.A., I.F.A.S., C.C.I.M. of New Orleans, Louisiana placed the fair market value of the Property at \$1 million as of March 15, 1985 and September 24, 1986 in initial and updated appraisals of the Property. However, in another updated appraisal, Mr. Gelphi determined that the Property had depreciated in value to \$925,000 as of March 30, 1987. The applicant attributes the fact that the sales price for the Property was even lower than its March 1987 appraised value to a further decline in real estate values in the New Orleans area.³

5. Philmat has made monthly payments under the Note on the seventh day of each month since April 7, 1988. Philmat has also made several large payments of principal which have substantially reduced the outstanding principal balance of the Note and will, in all probability, accelerate the full payment of the Note prior to its maturity date. As of January 7, 1990, the Note had an outstanding principal balance of \$261,188. In addition, the Plan has not incurred any servicing fees or costs that are directly related to its ownership of the Note.

6. The applicants believe that in today's economic market, the Plan's assets could be better invested in corporate bonds, other AAA investments or in guaranteed insurance contracts at a rate of return that is greater than the 8 percent return generated by the Note. Accordingly, the applicants request an administrative exemption from the Department to allow the Plan to sell the Note to the Employer for a cash sales price equal to the greater of the unpaid principal balance of the Note plus all accrued interest as of the date of the sale or the fair market value of the Note at the time the proposed transaction is consummated. The Plan will not be required to pay any fees or commissions in connection therewith.

7. The Note has been appraised by Waters, Parkerson and Company, Inc.

³ In this regard, the Department expresses no opinion herein on whether the sale of the Property by the Plan to Philmat or the execution of the Note by these parties violated any of the provisions of part 4 of title I of the Act.

(WPC), an independent investment adviser from New Orleans, Louisiana. As of December 4, 1989, WPC determined that the Note had a fair market value of \$359,073.⁴ WPC indicated that it based its valuation of the Note on the following factors: Philmat's timely pattern of repayment, the characteristics of the Note and prevailing interest rates. The Note will be revalued by WPC at the time of sale.

8. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale of the Note by the Plan to the Employer will represent a one-time transaction for cash; (b) the Plan will not be required to pay any fees or commissions in connection therewith; (c) the Plan will sell the Note to the Employer for an amount representing the greater of the outstanding principal balance of the Note plus all accrued interest as of the date of the sale or the fair market value of the Note at the time the transaction is consummated; (d) the Note has been appraised by WPC, a qualified independent appraiser and will be reappraised at the time of sale; and (e) the sale of the Note will allow the Plan to invest the sale proceeds in higher income-yielding investments.

FOR FURTHER INFORMATION CONTACT:

Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Graphic Communications International Union (GCIU), Graphic Communications International Mortuary Fund, and International Printing and Graphic Communications Union Burial Fund, (the Funds)

Located in Washington, DC

[Application Nos: D-8187, D-8188, D-8189]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed loan of \$5 million by the Funds to the GCIU, a party in interest with respect to the Funds, provided that the terms of the transaction are not less

favorable to the Funds, than those obtainable in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The GCIU Mortuary Fund and the International Printing and Graphic Communication Union Burial Fund provide burial expenses to beneficiaries of deceased union members. As of June 30, 1989, the GCIU Mortuary Fund covered approximately 61,000 union members and fund assets were approximately \$22,633,195. The International Printing and Graphic Communications Union Burial Fund covered approximately 48,000 members and as of June 30, 1989, fund assets were approximately \$18,295,795.

2. The GCIU proposes to borrow \$2.5 million from each of the two funds. The loan will be repaid in monthly interest only payments for five years, and on January 31, 1995 the unpaid balance of principal plus interest will be paid to the Funds. The interest rate would be 9¼%. As security for the loan, the GCIU will offer a promissory note and a deed duly recorded on the real property located at 1900 L Street, NW., Washington, DC. This property is owned by the GCIU and is without any liens or encumbrances. In August 1989, J. Lee Donnelly & Sons, Inc., a qualified and independent appraiser, determined the market value of the property to be \$18 million. The property is fully insured against casualty and loss by Aetna Life and Casualty Company with the Plans designated as loss payee.

3. The Funds have appointed Riggs National Bank of Maryland (Riggs Bank) to serve as independent fiduciary with respect to the proposed loan. Mr. Burke, a Senior Vice President of Riggs Bank, will act for Riggs Bank in this regard. Mr. Burke represents that he and Riggs Bank are independent of the parties to the transactions and recognizes the duties and responsibilities in serving as independent fiduciary. Riggs Bank has reviewed the terms of the proposed transaction and represent the loan terms are reasonable, appropriately based on current market conditions, and the interest rate constitutes a prevailing rate for such loans. Riggs Bank also represents that it has determined that the proposed transaction would be in the interest of the participants and beneficiaries because it would provide diversification of the Funds assets and additional returns to augment benefits. The rights of the participants and beneficiaries also will be protected by the promissory note evidencing the loan and by the property securing the loan.

4. In summary, the applicant represents that the proposed loan meets

the statutory criteria for an exemption under section 408(a) of the Act because: (a) The amount of the loan represents less than 25% of the Funds assets; (b) The loan will be secured by a promissory note and a deed to real property; (c) The collateral was appraised by a qualified independent appraiser; and (d) Riggs Bank will serve as independent fiduciary, and in this capacity has evaluated the terms of the loan and represented them to be as favorable to the Funds as similar transaction with an unrelated party would be.

FOR FURTHER INFORMATION CONTACT:

Allison Padams of the Department of Labor, telephone (202) 523-8671. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or

(4) The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the

⁴ As of the date of the appraisal, the applicant explains that the Note had an outstanding principal balance of \$379,257.

transaction which is the subject of the exemption.

Signed at Washington, DC, this 3rd day of April, 1990.

Ivan Strasfeld,

Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.

[FR Doc. 90-8018 Filed 4-5-90; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 90-12;
Exemption Application No. D-8029 et al.]

**Grant of individual exemptions;
National Bank for Cooperatives (NBC),
et al.**

AGENCY: Pension and Welfare Benefits
Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

National Bank for Cooperatives (NBC)
Located in Denver, Colorado

[Prohibited Transactions Exemption 90-12;
Exemption Application No. D-8029]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to certain transactions, described in the summary of facts and representations in the notice of proposed exemption, between cooperative banks of the Farm Credit System, including NBC (collectively, the Cooperative Banks) and certain employee benefit plans (the Plans), involving pass-through certificates which represent undivided interests in certain trusts (the Trusts) serviced by the Cooperative Banks; provided that (A) the decision by a Plan to engage in the transactions is made by a fiduciary of the Plan which is independent of the Cooperative Banks and the trustee of the Trusts; and (B) the terms of each such transaction are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Monday, January 29, 1990 at 55 FR 2696.

EFFECTIVE DATE: This exemption is effective as of September 15, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Internal Medicine Associates Medical
Group of San Diego, Inc. Pension Plan
and Internal Medicine Associates
Medical Group of San Diego, Inc.
Profit Sharing Plan (collectively, the
Plans)
Located in San Diego, CA

[Prohibited Transaction Exemption 90-13;
Exemption Application No. D-8169]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan (the Loan) by the Plans of \$200,000 to LKR Associates, a party in interest with respect to the Plans, provided the terms of the Loan are at least as favorable to the Plans as those obtainable in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 29, 1990 at 55 FR 2904.

FOR FURTHER INFORMATION CONTACT:

Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Your Family Dentists, P.A. Profit Sharing
and Retirement Plan (the Plan)

Located in Forked River, New Jersey

[Prohibited Transaction Exemption 90-14;
Exemption Application No. D-8234]

Exemption

The restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) and (E) of the Code, shall not apply to the sale (the Sale) by the Plan to Wilbert Veit, Jr., D.M.D. (Dr. Veit), a party in interest with respect to the Plan, of a collectible (the Collectible); provided that the Sale price be the greater of either: (a) The Plan's aggregate cost of acquisition and holding of the Collectible; or (b) the appraised fair market value of the Collectible as of the date of the Sale; and further provided that the other terms and conditions of the Sale are similar to those which the Plan might obtain in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 29, 1990, at 55 FR 2907.

FOR FURTHER INFORMATION CONTACT:

Mrs. B.S. Scott of the Department
telephone (202) 523-8883. (This is not a
toll-free number.)

Watkins Master Trust (the Trust)
Located in Atlanta, Georgia

[Prohibited Transaction Exemption 90-15; Exemption Application No. D-8078]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective September 20, 1989, to (1) the lease by the Trust of space in a certain commercial office building (the Building) to Wilwat Properties, Inc. (Wilwat), a party in interest with respect to employee benefit plans participating in the Trust; and (2) the proposed potential purchase of the Building by Wilwat from the Trust pursuant to provisions in such lease; provided that all terms of such transactions are no less favorable to the Trust than those which the Trust could obtain in arm's-length transactions with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on Monday, January 29, 1989 at 55 FR 2900.

EFFECTIVE DATE: This exemption is effective as of September 20, 1989.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Lyons Tool & Engineering, Inc.
Restated Profit Sharing Plan and Trust
Located in Warren, Michigan

[Prohibited Transaction Exemption 90-16; Exemption Application No. D-7927]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the continued leasing of certain improved real property by the Plan to Lyons Tool & Engineering, Inc., a party in interest with respect to the Plan, provided the terms of the lease are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on February 8, 1990 at 55 FR 4489.

EFFECTIVE DATE: This exemption is effective December 21, 1989.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department,

telephone (202) 523-8881. (This is not a toll-free number.)

United Company-Profit-Sharing and Retirement Plan (the Plan) Located in Bristol, Virginia

[Prohibited Transaction Exemption 90-17; Exemption Application No. D-8146]

Exemption

The restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the Plan's series of loans (the Loans) on a revolving basis for a term of five years to United Company (the Employer), the Plan's sponsor and, as such, a party in interest with respect to the Plan; provided that the terms and conditions of the Loans are at least similar to those obtainable by the Plan in an arm's-length transaction with an unrelated party; and further provided that the aggregate balance of all outstanding Loans at any one time not exceed twenty-five (25%) of the fair market value of the Plan's assets.

Temporary Nature of Exemption

The exemption is temporary and will expire five years from the date the exemption is granted. Subsequent to the expiration of the exemption, the Plan may continue to hold, until repayment, a Loan originated during the five year exemption period; provided that such Loan not have a term longer than one year.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 29, 1990, at 55 FR 2903.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott of the Department, telephone number (202) 523-8883. (This is not a toll-free number.)

Infomax Profit Sharing Plan (the Plan)
Located in Des Moines, Iowa

[Prohibited Transaction Exemption 90-18; Exemption Application No. D-8242]

Exemption

The restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply for a period of five years from the date of an exemption grant to (1) The purchase by the Plan of certain leases of equipment (the Lease) from Infomax Office Systems, Inc. of Des Moines (the Employer); (2) the agreement by the Employer to indemnify

the Plan against any loss relating to the Leases and also to repurchase any Leases that are in default in accordance with paragraph (C) below; and (3) the purchase by the Employer of the equipment subject to a Lease at the termination of such Lease pursuant to the purchase price option contained in the Lease; provided that the following conditions are met:

A. Any sale of Leases to the Plan will be on terms at least as favorable to the Plan as an arm's length transaction with an unrelated third party would be.

B. The acquisition of a lease from the Employer shall not cause the Plan to hold immediately following the acquisition; (i) more than 25 percent of the current value [as that term is defined in section 3(26) of the Act] of Plan assets in Leases sold by the Employer; or (ii) more than 5 percent of Plan assets (as defined above) in Leases of any one lessee.

C. Upon default by the lessee on any payment due under a Lease, the Employer guarantees in writing the immediate payment of all remaining rental payments and all other amounts due and owing under the Lease. A Lease shall be deemed to be in default for purposes of this section, if a payment due under the terms and conditions of the Lease is past due for 30 days; or in the event the lessee shall become insolvent, commit an act of bankruptcy, make an assignment for the benefit of creditors or a liquidating agent, offer a composition or extension to creditors, make a bulk sale; or in the event any proceeding, suit or action at law, in equity or under any of the provisions of the Bankruptcy Act or of amendments thereto for reorganization, composition, extension, arrangements, receivership, liquidation, or dissolution shall be begun by or against the lessee; or in the event of the appointment under any jurisdiction at law or in equity of any receiver or any property of the lessee; or in the event the condition of affairs of the lessee shall so change as to, in the opinion of the Trustee or other appropriate Plan fiduciaries, impair its security or increase its credit risk.

D. The Plan receives adequate security for the property underlying the Lease. For purposes of this exemption, the term adequate security means that the property is secured by a perfected security interest in the property leased so that, if there is a default on the Lease, and the security is foreclosed upon, or otherwise disposed of, the value and liquidity of the security is such that it may reasonably be anticipated that the Plan will experience no loss.

E. Insurance against loss or damage to the leased property from fire or other hazards will be procured and maintained by the lessee and the proceeds from such insurance will be assigned to the Plan.

F. The Plan shall maintain for the duration of any Lease which is sold to the Plan pursuant to this exemption, records necessary to determine whether the conditions of this exemption have been met. The records referred to above must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plan, during normal business hours by the Internal Revenue, the Department of Labor, Plan participants, any employee organization any of whose members are covered by the Plan, or any duly authorized employee or representative of the above described persons.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 29, 1990, at 55 FR 2905.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the

transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 3rd day of April, 1990.

Ivan Strasfeld,

Director of Exemption, Determinations, Pension and Welfare Benefits Administration U.S. Department of Labor.

[FR Doc. 90-8019 Filed 4-5-90; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-247]

Consolidated Edison Company of New York, Inc.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. DPR-26, issued to the Consolidated Edison Company of New York, Inc. (the licensee), or operation of the Indian Nuclear Generating Unit No. 2 in Westchester County, New York.

Environmental Assessment

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications (TS) and would authorize an increase of the storage capacity of the spent fuel pool from 980 fuel assemblies to 1376 fuel assemblies.

The amendment to the TS is responsive to the licensee's applications dated June 20, 1989, as supplemented August 25, 1989; October 23, 1989; January 19, 1990; January 24, 1990; February 9, 1990; February 23, 1990; and March 5, 1990. The Commission's staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pool, Facility Operating License No. DPR-26, Consolidated Edison Company of New York, Inc., Docket No. 50-247 dated March 29, 1990.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG-0575), Volume

1-3, concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For Indian Point Nuclear Generating Unit No. 2, the expansion of the storage capacity of the spent fuel pool will not create any significant additional effects or non-radiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary is well within regulatory limits and is not significant. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than five percent of the total annual occupational radiation exposure for this facility.

The only non-radiological impact affected by the spent fuel pool expansion is the waste heat rejected. The increase in total plant waste heat is insignificant. There is no significant environmental impact attributed to the waste heat from the plant due to the spent fuel pool expansion.

Finding of no Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated June 30, 1989, as supplemented August 25, 1989; October 23, 1989; January 19, 1990; January 24, 1990; February 9, 1990; February 23, 1990; and March 5, 1990, (2) the FGEIS on Handling and Storage of Spent Light Water Power Fuel (NUREG-0575), (3) the Final Environmental Statement for Indian Point 2 dated September 1972, and (4) Environmental Assessment dated March 29, 1990.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street,

NW., Washington, DC 20555 and at the White Plains Public Library, 100 Maritime Avenue, White Plains, New York 10610.

Dated at Rockville, Maryland, this 20 day of March, 1990.

For the Nuclear Regulatory Commission,
Daniel G. McDonald,

*Acting Director, Project Directorate I-1,
Division of Reactor Projects-1/II, Office of
Nuclear Reactor Regulation.*

[FR Doc. 90-7984 Filed 4-5-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-309]

**Maine Yankee Atomic Power Co.,
Maine Yankee Atomic Power Station;
Environmental Assessment and
Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-36 issued to Maine Yankee Atomic Power Company (the licensee) for operation of the Maine Yankee Atomic Power Station located in Lincoln County, Maine.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Technical Specifications (TS) with respect to Section 5.12, High Radiation Area. The application addresses the administrative controls for locked high radiation area access and provides clarification for determining the high radiation area dose value.

The proposed action is in accordance with the licensee's application for amendment dated December 22, 1989.

The Need for the Proposed Action

The proposed change to the TS would clarify the Administrative Control requirements of Technical Specification 5.12.2 for high radiation area locked door controls. This clarification consists of three points. First, measurement clarification is provided for the 1000 mrem value for which the specification was written. Second, an added paragraph addresses administrative control for unlocking the locked doors for access; remote surveillance would be allowed as part of these administrative controls. Third, an additional added paragraph would allow direct surveillance in lieu of locked doors for applicable areas established for a period of 30 days or less.

The proposed change also reflects a new organizational position of Radiation Protection Manager.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions are administrative in nature and clarify an administrative section of the Technical Specifications. The proposed clarification would address three points on administrative requirements for locked high radiation area access controls. A clarification of the measurement criteria of the 1000 mrem value is taken directly from Standard Technical Specifications. An added paragraph which addresses administrative controls for unlocking locked doors for access is considered to be consistent with controls provided by Standard Technical Specifications. An added paragraph allowing direct surveillance in lieu of locked doors for short term areas is taken from 10 CFR 20.203(c)(4). The two added paragraphs will afford opportunities to reduce personnel radiation exposure, incident to establishing and maintaining controls for the subject areas, without impacting on the intended access and exposure control requirements of the specification.

The proposed change also reflects a new organizational position of Radiation Protection Manager whose responsibilities include those currently delineated for the Radiological Controls Section Head in Specification 5.12.

Neither the current Technical Specifications nor the specifications as changed have, or would have, an effect on the physical plant nor on the operation or maintenance of the physical plant. The proposed change would, therefore, have no impact on the probability or consequences of an operational event. The proposed change, therefore, has no effect on the probability or consequences of any previously evaluated accident. The proposed changes do not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact.

Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on February 8, 1990 (55 FR 4499). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in not meeting NRC requirements.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Maine Yankee Atomic Power Station, dated July 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated December 22, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, Maine 04578.

Dated at Rockville, Maryland, this 30th day of March 1990.

For the Nuclear Regulatory Commission,
Richard H. Wessman,

*Director, Project Directorate I-3 Division of
Reactor Projects, I/H Office of Nuclear
Reactor Regulation.*

[FR Doc. 90-7985 Filed 4-5-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361 and 50-362]

Southern California Edison Co. et al.; Supplement to Environmental Assessment and Finding of No Significant Impact Relating to Spent Fuel Pool Reracking

In the matter of Southern California Edison Co., San Diego Gas and Electric Company, the City of Riverside, California, the City of Anaheim, California.

Background

On February 27, 1990, the NRC staff issued an Environmental Assessment related to the license amendment that would increase the maximum storage capacity of the spent fuel pools at San Onofre Nuclear Generating Station, Unit Nos. 2 and 3. An Issuance of Environmental Assessment and Finding of No Significant Impact was published in the *Federal Register* on March 7, 1990 (55 FR 8248).

An error was detected in the Environmental Assessment in regard to Section 3.0, "Radiological Impact Assessment." The staff determined that an additional review of the available documentation was necessary in order to determine if the conclusions of the original Environmental Assessment remained valid.

This supplement to the Environmental Assessment reflects the results of the staff's review. The staff has determined that the conclusions of the original Environmental Assessment remain valid. Moreover, the original finding of no significant impact remains valid also.

However, this supplement will correct the error that was detected in the Environmental Assessment. Section 3.0, entitled "Radiological Impact Assessment," has been corrected to reflect the modified information. Section 3.0 is corrected to read as follows:

Radiological Impact Assessment

The occupational exposure for the proposed modification of the SFPs is estimated by the licensee to be less than 41 person-rem per unit based on the detailed breakdown of occupational dose for each phase of operation. This dose is approximately 12 percent of the average annual occupational dose person-rem experienced at PWRs in the United States, which is currently about 340 person-rem per unit. The total dose incurred during the reracking of the SFPs is expected to be a small fraction of the total occupational radiation dose incurred from operating San Onofre Units 2 and 3.

Additionally, we have evaluated the increase in onsite occupational dose during normal operations, after pool

modifications, resulting from the proposed increase in the number of fuel assemblies stored in the pool. Based on the present and projected operations in the SFP areas, we estimate that the proposed modifications will increase the total annual occupational exposure at both units by less than one percent.

The licensee intends to take ALARA considerations into account, and to implement reasonable dose-saving activities. We conclude that the licensee will be able to maintain individual occupational exposures within the applicable limits of 10 CFR part 20, and maintain doses ALARA, consistent with the guidelines of Regulatory Guide 8.8.

Thus, we conclude that the proposed storage of spent fuel in the modified SFP will not result in any significant increase in doses received by workers.

Finding of no Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment dated March 10, 1989, as supplemented by letters dated April 19, May 4, May 19, June 1, June 2, September 22, November 2, and November 9, 1989, and January 18, February 9, February 16, 1990 and March 20, 1990; (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575); (3) the FES for SONGS 2/3 dated April 1981; and (4) the Environmental Assessment dated February 27, 1990 (55 FR 8248).

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 2nd day of April 1990.

For the Nuclear Regulatory Commission.

Charles M. Trammell III,
*Acting Director, Project Directorate V,
Division of Reactor Projects—III, IV V and
Special Projects, Office of Nuclear Reactor
Regulation.*

[FR Doc. 90-7986 Filed 4-5-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 19th meeting on April 26 and 27, 1990, Room P-110, 7920 Norfolk Avenue, Bethesda, MD, 8:30 a.m. until 5:00 p.m. each day. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy 5 U.S.C. 552b(c)(6).

The purpose of the meeting will be to review and discuss the following topics:

A. Review and comment on Characterization of the Yucca Quaternary Regional Hydrology Study Plan (Open).

B. Review results of the waste confidence review group's final review report which includes the disposition of public comments (Open).

C. Briefing on the recent BEIR V report regarding, "Health Effects of Exposure to Low Levels of Ionizing Radiation" (Open).

D. Continue ACNW considerations of EPA's High-Level Radioactive Waste Standards, as appropriate (Open).

E. Prepre a four month program plan of ACNW activities for the Nuclear Regulatory Commission (Open).

F. Appointment of ACNW members, discuss the qualifications of candidates proposed for ACNW membership (Open/Closed).

G. Committee Activities—The Committee will discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters, as appropriate (Open).

Procedures for the conduct of a participation in ACNW meetings were published in the *Federal Register* on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACRS. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACRS Chairman. Information regarding the time to be set aside for this purpose may be obtained

by a prepaid telephone call to the Executive Director of the office of the ACRS, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director or call the recording (301/492-4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: April 2, 1990.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-7987 Filed 4-5-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittees on Thermal Hydraulic Phenomena and Core Performance; Meeting

The Subcommittees on Thermal Hydraulic Phenomena and Core Performance will hold a joint meeting on April 27, 1990, in the Pennsylvania Room at the Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, April 27, 1990—8:30 a.m. until the conclusion of business

The Subcommittees will continue their review of boiling water reactor core power stability pursuant to the core power oscillation event at LaSalle County Station, Unit 2.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, the Boiling Water Reactor Owners

Group, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 301/492-8558) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 1, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90-7988 Filed 4-5-90; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Subcommittees on Advanced Pressurized Water Reactors and Advanced Boiling Water Reactors; Meeting

The Subcommittees on Advanced Pressurized Water Reactors and Advanced Boiling Water Reactors will hold a joint meeting on April 26, 1990, in the Pennsylvania Room at the Holiday Inn, 9120 Wisconsin Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, April 26, 1990—8:30 a.m. until the conclusion of business

The Subcommittees will discuss the licensing review basis documents for CE System 80+ and GE ABWR designs.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be

considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Medhat M. El-Zeftawy (telephone 301/492-9901) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: April 2, 1990.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 90-7989 Filed 4-5-90; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Request for Comment on Study of Federal Information Inventory and Locator Systems

AGENCY: Office of Management and Budget.

ACTION: Notice.

SUMMARY: The Office of Management and Budget requests public comment for a research study entitled "Federal Information Inventory and Locator Systems: Policy Review and Recommendations."

DATES: Comments from the public should be submitted no later than May 21, 1990.

ADDRESSES: Comments should be addressed to: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Room 3235 New Executive Office Building, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395-4814.

FOR FURTHER INFORMATION CONTACT: Professor Charles R. McClure, School of Information Studies, Room 4-218 Center for Science and Technology, Syracuse University, Syracuse, New York 13244-4100. Telephone: (315) 443-2911.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) requests public comment

concerning government information inventory and locator systems. Comments will contribute to a six-month research study, presently in progress, entitled "Federal Information Inventory and Locator Systems: Policy Review and Recommendations." The study is scheduled for completion by June 30, 1990.

In recent years a number of statutes and regulations have been adopted that require various Federal agencies to maintain inventory systems or other means of locating various types of government information, products, and services. Examples include the Federal Information Locator System (FILS), the Unified Agenda of Federal Regulations, inventories of major information systems, and inventories required in the Computer Security Act and the Computer Matching and Privacy Protection Act. However, the purpose, requirements, and operation of these efforts, when taken as a whole, are confusing and ambiguous.

Further, there has been considerable discussion that the concept of FILS, as mandated in the Paperwork Reduction Act (44 U.S.C., chapter 35) is too narrow in scope and inadequately addresses issues related to public access to and dissemination of government information. The study will explore the notion of a Federal inventory/locator system that is broader in context than FILS and could be approached on a government-wide basis with the aims of: (1) Assisting agencies to better manage their information resources, and (2) improving public access to and dissemination of government information.

Given this context, the study will carefully review the existing policy system regarding "information inventory/locator systems"; clarify the concepts behind such systems; assess the objectives and uses for such systems; and offer recommendations for how such systems can best meet the needs of both Federal agencies and the general public.

The study's purpose is to explore policy and system options and make recommendations related to an information locator/inventory policy system for public government information. It will investigate key concepts, requirements, and current efforts to provide inventory/locator systems.

To assist in accomplishing the study's purpose, OMB solicits public comment concerning the following questions:

1. Is it desirable and/or feasible to establish a Federal inventory/locator system for public government information? How might an information

inventory/locator system for public government information be defined, and what objectives should the system accomplish?

2. How might an inventory/locator system for public government information be configured? What data should such a system include: Information collection requests, information products and services, databases, information sources, or some combination of the above? How might the system best be administered?

3. Would it be desirable to standardize information elements in inventory/locator systems maintained by Federal agencies so that agency systems could be collected into a government-wide inventory?

4. What government information inventory/locator systems exist currently? How might they be improved to best meet the needs of both the government and the public?

5. To what degree should an inventory/locator system be considered as part of, or linked to, Federal information resources management activities?

6. How well do existing statutes and regulations provide guidance and direction to Federal agencies in maintaining inventory/locator systems? What specific statutes and regulations provide such guidance? Should steps be taken to revise these statutes and regulations?

7. What are appropriate roles and relationships for OMB, other Federal agencies, the private sector, the library and information science community, and other groups in the development, design, and operation of an information inventory/locator system for public government information?

8. How can OMB encourage Federal agencies to maintain better government information inventory/locator systems as part of: (1) Agencies' information resources management activities and (2) to improve access to public government information?

The study is sponsored by the Regulatory Information Service Center, General Services Administration, and co-sponsored by OMB's Office of Information and Regulatory Affairs. The Regulatory Information Service Center assists OMB in operating several information systems that track the status of, and provide public information on, the status of regulations and information collections. The principal investigator for the study is Professor Charles R. McClure, Syracuse University, Syracuse, New York. Ms. Ann Bishop, Mr. Philip Doty, and Ms. Pierette Bergeron also serve on the study team. Additional information

about the study can be obtained from members of the study team at the address listed above.

James B. MacRae, Jr.,

Acting Administrator and Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 90-8017 Filed 4-5-90; 8:45 am]

BILLING CODE 3110-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by civil service rule VI. Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT:

John Daley, (202) 632-0728.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on February 9, 1990 (55 FR 678). Individual authorities established or revoked under Schedule A, B, and C between February 1, 1990, and February 28, 1990, appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

Schedule A

No Schedule A authorities were established or revoked during February.

Schedule B

No Schedule B authorities were established or revoked during February.

Schedule C

Action

On Assistant Director for Older American Volunteer Programs to the Associate Director for Domestic and Anti-Poverty Operations. Effective February 23, 1990.

Department of Agriculture

One Confidential Assistant to the Director, Office of Public Affairs. Effective February 1, 1990.

One Confidential Assistant to the Administrator, Agricultural Stabilization

and Conservation Service. Effective February 15, 1990.

One Confidential Assistant to the Chief, Soil Conservation Service. Effective February 15, 1990.

One Northwest Area Director, Agricultural Stabilization and Conservation Service, to the Deputy Administrator, State and County Operations. Effective February 16, 1990.

One Confidential Assistant to the Assistant Secretary for Economics. Effective February 16, 1990.

One Staff Assistant to the Secretary. Effective February 27, 1990.

Department of the Army

One Plans Coordinator to the Chief of Public Affairs. Effective February 9, 1990.

U.S. Commission on Civil Rights

One Special Assistant to the Commissioner. Effective February 5, 1990.

Department of Commerce

One Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective February 5, 1990.

One Special Assistant to the Assistant Secretary for Technology Policy. Effective February 9, 1990.

One Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective February 9, 1990.

One Congressional Liaison Assistant to the Deputy Assistant Secretary for Congressional Affairs. Effective February 14, 1990.

One Special Assistant to the Director, Office of White House Liaison. Effective February 14, 1990.

One Deputy Director for Congressional Affairs to the Deputy Assistant Secretary for Congressional Affairs. Effective February 16, 1990.

One Special Assistant to the Director, Ocean and Coastal Resource Management. Effective February 27, 1990.

One Confidential Assistant to the Assistant Secretary for Technology Policy. Effective February 27, 1990.

Consumer Product Safety Commission

One Special Assistant (Legal) to the Chairman. Effective February 8, 1990.

Department of Defense

One Special Assistant for Strategic Modernization to the Assistant Secretary of Defense (Legislative Affairs). Effective February 1, 1990.

One Deputy Assistant, to the Assistant to the Secretary of Defense. Effective February 1, 1990.

One Director, Humanitarian Assistance, to the Deputy Assistant Secretary of Defense (Global Affairs). Effective February 2, 1990.

One Personal and Confidential Assistant to the Assistant Secretary of Defense (Command, Control, Communications and Intelligence). Effective February 5, 1990.

One Director, Atlantic-Pacific Issues, to the Assistant Deputy Under Secretary of Defense for Policy Planning. Effective February 6, 1990.

One Assistant for Multi-Lateral Negotiations to the Assistant Secretary of Defense (International Security Policy). Effective February 7, 1990.

One Personal and Confidential Assistant to the Director of Net Assessment. Effective February 9, 1990.

One Private Secretary to the Principal Deputy Assistant Secretary of Defense (Special Operations and Low-Intensity Conflict). Effective February 9, 1990.

One Secretary (Stenography) to the Inspector General. Effective February 12, 1990.

One Special Assistant for Production and Logistic and Energy to the Assistant Secretary (Legislative Affairs). Effective February 12, 1990.

One Confidential Assistant to the Military Assistant to the Secretary. Effective February 20, 1990.

One Private Secretary to the Principal Deputy Assistant Secretary (Reserve Affairs). Effective February 26, 1990.

One Private Secretary to the Assistant Secretary (Reserve Affairs). Effective February 27, 1990.

One Staff Assistant to the Assistant Secretary (Force Management and Personnel). Effective February 27, 1990.

Department of Energy

One Staff Assistant, to the Chief of Staff to the Secretary. Effective February 1, 1990.

One Staff Assistant, to the Director, Office of Energy Research. Effective February 22, 1990.

One Staff Assistant, to the Under Secretary. Effective February 22, 1990.

One Confidential Assistant to the Chief of Staff and Counselor to the Chairman. Effective February 22, 1990.

Two Staff Assistants to the Director, Office of Energy Research. Effective February 23, 1990.

One Staff Assistant to the Associate Deputy Under Secretary for Intergovernmental Policy Coordination. Effective February 26, 1990.

One Senior Program Analyst to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 26, 1990.

One Staff Assistant to the Director, Office of Energy Research. Effective February 26, 1990.

One Special Assistant to the Assistant Secretary for Defense Programs. Effective February 26, 1990.

One Staff Assistant to the Director, Office of Nuclear Safety. Effective February 26, 1990.

Department of Education

One Confidential Assistant to the Assistant Secretary for Vocational and Adult Education. Effective February 1, 1990.

One Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective February 1, 1990.

One Special Assistant to the Director, Fund for the Improvement and Reform of Schools and Teaching. Effective February 5, 1990.

One Deputy Secretary's Regional Representative, Region II, to the Secretary's Regional Representative, Office of Intergovernmental/Interagency Affairs. Effective February 9, 1990.

One Confidential Assistant to the Deputy Under Secretary for Management. Effective February 13, 1990.

One Confidential Assistant to the Chief of Staff/Counselor to the Secretary. Effective February 14, 1990.

One Special Assistant to the Administrator for Management Services. Effective February 14, 1990.

One Confidential Assistant to the Executive Secretary. Effective February 14, 1990.

One Confidential Assistant to the Assistant Secretary for Science and Education. Effective February 16, 1990.

One Confidential Assistant to the Assistant Secretary for Vocational and Adult Education. Effective February 22, 1990.

One Special Assistant to the General Counsel. Effective February 23, 1990.

One Special Assistant to the Assistant Secretary for Postsecondary Education. Effective February 23, 1990.

Department of Transportation

One Special Assistant for Scheduling to the Secretary. Effective February 22, 1990.

One Congressional Liaison Officer to the Assistant Administrator for Government and Industry Affairs, Federal Aviation Administration. Effective February 26, 1990.

Environmental Protection Agency

One Staff Assistant to the Associate Administrator for Communications and Public Affairs. Effective February 1, 1990.

One Special Assistant to the Associate Administrator for Communications and Public Affairs. Effective February 22, 1990.

One Deputy Associate Administrator to the Associate Administrator for Communications and Public Affairs. Effective February 22, 1990.

Federal Trade Commission

One Congressional Liaison Specialist to the Chairman. Effective February 7, 1990.

General Services Administration

One Staff Assistant to the Associate Administrator for Operations and Industry Relations. Effective February 16, 1990.

One Special Assistant to the Chief of Staff. Effective February 23, 1990.

One Confidential Assistant to the Acting Deputy Administrator. Effective February 27, 1990.

Department of Health and Human Services

One Director, Office of Adolescent Pregnancy Programs to the Deputy Assistant Secretary for Population Affairs. Effective February 2, 1990.

One Special Assistant to the Associate Commissioner for Legislative Affairs, Food and Drug Administration. Effective February 20, 1990.

Department of Housing and Urban Development

One Staff Assistant to the Assistant Secretary for Public and Indian Housing. Effective February 5, 1990.

One Special Assistant to the Assistant Secretary for Administration. Effective February 16, 1990.

One Senior Intergovernmental Relations Officer to the Deputy Under Secretary for Intergovernmental Relations. Effective February 23, 1990.

Interstate Commerce Commission

One Confidential Assistant to the Chairman. Effective February 23, 1990.

Department of the Interior

One Congressional Liaison Specialist to the Director, Office of Surface Mining Reclamation and Enforcement. Effective February 1, 1990.

One Special Assistant to the Assistant Secretary—Territorial and International Affairs. Effective February 1, 1990.

One Special Assistant (Denver, Colorado) to the Deputy Commissioner. Effective February 2, 1990.

One Special Assistant (Public Affairs) to the Deputy to the Assistant Secretary—Indian Affairs (Operations). Effective February 5, 1990.

One Public Affairs Specialist to the Director, Minerals Management Service. Effective February 5, 1990.

One Special Assistant to the Assistant Secretary—Policy, Budget and Administration. Effective February 8, 1990.

One Associate Director for Offshore Minerals Management, Minerals Management Service. Effective February 16, 1990.

Department of Justice

One Counsel to the Director, U.S. Marshals Service. Effective February 7, 1990.

One Confidential Assistant to the Executive Assistant to the Attorney General. Effective February 8, 1990.

One Deputy to the Director of Congressional Affairs, Immigration and Naturalization Service. Effective February 13, 1990.

One Special Assistant for Policy Development to the Commissioner, Immigration and Naturalization Service. Effective February 20, 1990.

One Special Projects Director to the Deputy Commissioner, Immigration and Naturalization Service. Effective February 20, 1990.

Department of Labor

One Special Assistant to the Director, Office of Federal Contract Compliance Programs, Employment Standards Administration. Effective February 26, 1990.

National Endowment for the Arts

One Director of Public Affairs to the Senior Deputy Chairman. Effective February 7, 1990.

Office of National Drug Control Policy

One Special Assistant for Prevention to the Deputy Director for Demand Reduction. Effective February 9, 1990.

One Special Assistant for Prevention/Education for State and Local Affairs to the Associate Director for State and Local Affairs. Effective February 28, 1990.

One Special Assistant for Treatment/Health for State and Local Affairs to the Associate Director, State and Local Affairs. Effective February 28, 1990.

Office of Personnel Management

One Staff Assistant to the Director, Office of Executive Administration. Effective February 7, 1990.

Small Business Administration

One Special Assistant to the Associate Deputy Administrator for Finance, Investment and Procurement. Effective February 5, 1990.

One Special Assistant to the Associate Deputy Administrator for Management and Administration. Effective February 22, 1990.

One Special Assistant to the Regional Administrator, Philadelphia, Pennsylvania. Effective February 23, 1990.

Department of State

One Special Assistant to the U.S. Negotiator for Defense and Space. Effective February 5, 1990.

One Secretary (Steno) to the Under Secretary for Security Assistance, Science and Technology. Effective February 12, 1990.

Department of Treasury

One Principal Senior Deputy Director to the Director, Office of Thrift Supervision. Effective November 6, 1989. (Note: This position should have appeared in the listing dated Monday, January 8, 1990; 55 FR 678).

One Senior Advisor for Economic Policy Coordination. Effective February 8, 1990.

One Staff Assistant to the Director of Public Affairs. Effective February 8, 1990.

Authority: 5 U.S.C. 3301; E.O. 10555, 3 CFR 1954-1956 Comp., p.218.

Office of Personnel Management.
Constance Berry Newman,
Director.

[FR Doc. 90-7912 Filed 4-5-90; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-27864; File No. SR-DGOC-90-03]

Self-Regulatory Organizations; The Delta Government Options Corporation; Notice of Filing of a Proposed Rule Change Relating to Procedures for Exercise of Options Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 8, 1990, Delta Government Options Corporation ("Delta") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Delta is filing herewith a proposed rule change relating to Delta's Exercise Procedures and Trade Reporting occurring on Exercise Date.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to afford to Delta's participants a more abbreviated exercise process thereby permitting both the buyer and seller to simultaneously be aware of the total amount of options in their respective portfolios that have been successfully exercised or have been subjected to exercise by the issuer.

Delta's proposal would compress the time period during which participants may exercise options on expiration date.¹ Under Delta's current expiration date exercise procedures, Security Pacific National Trust Company (New York) ("Security Pacific"), Delta's clearing bank, issues to each participant a preliminary report by 8 a.m.² on each options expiration date. This report lists each option in the participant's account that is due to expire that day. Option contracts included in this report are valued at their closing price as of the previous day.

After receiving this report, each participant indicates the option contracts to be exercised and returns the report to Security Pacific by 10 a.m. At 2 p.m., Security Pacific issues a final report to each participant reflecting the participant's exercise instructions. Each participant must return this report, along

with any revocation or modification of its exercise instructions, to Security Pacific by 5 p.m. Once returned, these exercise instructions are irrevocable, and the options contracts indicated will be exercised by Delta in accordance with the participant's instructions. In addition, and unless specifically directed otherwise, Delta will exercise automatically all of a participant's option contracts that are in-the-money by a predetermined amount.

Under Delta's proposal, Security Pacific would issue a report to all participants listing each expiring option contract by 8 a.m. on the expiration date, which will be either the first or third Friday of each month depending on the series expiring.³ Similar to Delta's current procedures, this report would reflect the closing price of each option contract on the preceding day. For expiring options, trading in each option contract would cease at 1:30 p.m. for participant-to-participant trades and at 2 p.m. for trades executed through RMJ Options Trading Corporation.

At or before 3:30 p.m., Security Pacific would issue another report to each participant listing each expiring option contract in the participant's account. This report would update the preliminary report to reflect trading activity in those options up to the 2 p.m. cut-off time. Each participant must return this report to Security Pacific indicating which option contracts it desires to exercise by 4 p.m. At or before 5 p.m., Security Pacific will issue a final report to participants that reflects each participant's exercise instructions and lists any additional option contracts expiring that day which have been added to the participant's account. Each participant must return a signed copy of this report as updated and corrected to Security Pacific by 6 p.m.

Delta then will determine the number of option contracts for each series of options exercised by and assigned to each participant for settlement on the exercise settlement date. As soon as practicable after 6 p.m., Security Pacific will issue each participant a report reflecting its gross settlement obligations. Unlike Delta's current procedures, Delta will not exercise automatically any of a participant's in-the-money option contracts unless so directed by the participant.

On the business day following the expiration date, Delta will net each participant's gross settlement obligations to the extent possible and allocate deliver and receive obligations among participants. Each participant

then will receive an exercise settlement report reflecting its netted deliver and receive obligations.

(b) The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to Delta since the proposed rule change will provide a more abbreviated exercise process and will increase efficiency in eliminating the time lag between the moment option contracts are available for exercise on expiration date and the moment of actual exercise.

B. Self-Regulatory Organization's Statement on Burden on Competition

Delta does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Delta neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

- By order approve such proposed rule change or,
- Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for

¹ Currently, all option contracts traded through Delta's system expire on the Saturday following the third Friday of each month. See Delta Rule 101. Delta has filed a rule change with the Commission which provides that options traded through Delta's system will expire on either the first or third Friday of each month. See Securities Exchange Act Release No. 27795 (March 13, 1990), 55 FR 10566.

² All times refer to Eastern Standard Time.

³ See note 1, *supra*.

inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-DGOC-90-03 and should be submitted by April 27, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 30, 1990.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-8003 Filed 4-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27868; File No. SR-MSE-90-4]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the Midwest Stock Exchange, Inc. Relating to Index Warrants

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 12, 1990 the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE is proposing to: (1) Adopt Rule 8 under Article XXVIII of the MSE's rules to provide listing standards applicable to index warrants based on both domestic and foreign market indexes; (2) amend Rule 3 of Article XLVIII to make the option suitability standard in Rule 5 of Article XLVIII applicable to recommendations regarding index warrants; (3) amend Rule 6 of Article XLVIII to require that discretionary orders in index warrants be approved and initialled on the day entered by a Senior Registered Options Principal or a Registered Options Principal; and (4) approve for trading pursuant to listing or unlisted trading privileges, index warrants based on the

Nikkei Stock Average.¹ The text of the proposed rule changes may be examined at the places specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

(1) Purpose

The Exchange is proposing to amend its rules to establish a regulatory framework that permits the listing of index warrants generally as well as index warrants specifically based on the Nikkei Stock Average. The proposed index warrants will be unsecured obligations of an issuer, subject to cash settlement in United States dollars during a term of at least one year from date of issuance. Only index warrants based on established market indexes, both foreign and domestic, will be accepted for listing.

Index warrants would be eligible for listing whether exercisable throughout their life (i.e., American style) or exercisable only on their expiration date (i.e., European style). Upon exercise, or at the index warrant expiration date (if not exercisable prior to such date), the holder of an index warrant structured as a "put" would receive payment in United States dollars to the extent that the index has declined below a pre-stated cash settlement value. Conversely, holders of an index warrant structured as a "call" would, upon exercise or at expiration, receive payment in United States dollars to the extent that the index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the index warrants would expire worthless.

¹ The Nikkei Index is an internationally recognized, price-weighted index comprised of 225 actively-traded stocks on the Tokyo Stock Exchange. The Nikkei Index is calculated and managed by Nihon Keizai Shimbun, Inc. of Japan.

Since the index warrants would represent unsecured obligations of the issuer, only index warrants issued by companies that have assets in excess of \$100 million and otherwise substantially exceed the size and earnings requirements for listing on the MSE would be eligible for listing on the MSE. The MSE also proposes to require a minimum public distribution of 1,000,000 index warrants together with a minimum of 400 public holders, and an aggregate market value of \$4,000,000.

The MSE also proposes to require that recommendations to buy or sell index warrants be subject to the suitability standards contained in Rule 5 of Article XLVIII of the MSE Rules, which currently applies to only options related accounts. The MSE also proposes to recommend that index warrants be sold only to options-approved accounts; however, whether or not an account has been approved for options trading, the options suitability standards in Rule 5 of Article XLVIII will apply to all recommended transactions in index warrants.

The MSE also proposes to amend Rule 6 of Article XLVIII to require that all index warrant transactions in discretionary accounts be subject to the requirement that a Senior Registered Options Principal or a Registered Options Principal approve and initial a discretionary order in index warrants on the day the order is issued.

The Exchange proposes to distribute a circular to its membership highlighting specific rules associated with index warrants based on the Nikkei Stock Average, whether the index warrant is listed on the MSE or available for unlisted trading privileges. The circular given to the members will specifically call attention to the need to provide adequate disclosure regarding the risks involved in an index warrant investment and will specify the suitability standards under Rule 5 of Article XLVIII.

The MSE also is undertaking to establish an appropriate means for surveillance sharing with respect to the Nikkei Stock Average component stocks.

(2) Statutory Basis

The Exchange believes that the proposed rules changes are consistent with section 6(b)(5) of the Act in that they are, among other things, designed to promote just and equitable principles of trade, to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange. Furthermore, the proposed rules amendments are consistent with section 11A(a)(1)(C)(ii) of the Act in that they will tend to assure fair competition among exchange markets and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSE does not believe that any burdens will be placed on competition as a result of the proposed rule change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- By order approve such proposed rule change, or
- Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by April 27, 1990.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²

Dated: April 2, 1990.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-8004 Filed 04-05-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-27867; File No. SR-NASD-90-6]

Self Regulatory Organizations; Order Approving a Proposed Rule Change of the National Association of Securities Dealers, Inc. Relating to the Ability to Cancel Erroneous Transactions

On January 30, 1990, the National Association of Securities Dealers ("NASD" or "Association") submitted a proposed rule change to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). The purpose of the proposed rule change is to add a section 70 to the Uniform Practice Code to permit the Association to declare clearly erroneous transactions void if they arise out of the use of an automated system operated by the NASD, including specifically the Intermarket Trading System/Computer Assisted Execution System Interface ("ITS/CAES"). The proposed rule change would also expand the scope of Article IX of the NASD's Code of Procedure to cover grievances arising out of the operation of any automated NASD system. Article IX currently covers grievances arising out of National Association of Securities Dealers Automated Quotation System ("NASDAQ") only.¹

Notice of the proposed rule change was given in Securities Exchange Act Release No. 27711 (February 15, 1990), 55 FR 6571. The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

² 17 CFR 200.30-3(a)(12) (1989).

¹ We anticipate, however, that disputes under the proposed section 70 concerning the ITS/CAES linkage will be resolved through ITS dispute resolution procedures.

As noted above, the rule change would, first, add a section 70 to the Uniform Practice Code to permit the Association to declare clearly erroneous transactions void if they arise out of the use of an automated system operated by the NASD. Currently, the NASD lacks the authority to cancel a transaction, even if one or more terms of the transaction are clearly in error. Proposed section 70 would provide the NASD with the authority to declare a clearly erroneous transaction null and void in cases where it "deems it necessary to maintain a fair and orderly market, and to protect investors and the public interest." The rule also contains time frames and procedural guidelines for complaining of an error, receiving an NASD ruling, and, if necessary, appealing that decision to a review panel. The rule would apply to transactions occurring not only in NASDAQ but also involving other NASD systems such as the Order Confirmation Transaction System, the Automated Confirmation Transaction Service, and the ITS/CAES linkage.

Second, the proposed rule change would amend Article IX of the Code of Procedure to expand its scope to cover redress for grievances arising out of the operation of "any automated quotation, execution, or communication system owned or operated by the Corporation or subsidiary thereof, and approved by the Commission," rather than just the NASDAQ system.

The Commission finds that approval of the proposed rule change is consistent with the Act; in particular, with Section 15A(b)(6), which requires that the rules of the Association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system....," and section 11A(a)(1)(B) which sets forth the Congressional goal of achieving more efficient and effective market operations. The proposed rule change will be beneficial to broker/dealers using NASD automated systems because it will provide an efficient and immediate mechanism for breaking clearly erroneous trades, with adequate protections for review and appeal of decisions.

It is therefore ordered, pursuant to section 19(b)(2) of the Act that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 2, 1990.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-8005 Filed 4-5-90; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-17404; (812-7469)]

Application and Temporary Order

April 2, 1990.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Temporary order and notice of filing of application for permanent order of exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Smith Barney, Harris and Upham Incorporated ("SBHU" or "Applicant").

RELEVANT SECTIONS: Permanent order requested, and temporary order granted, under section 9(c) of the Act granting exemption from section 9(a).

SUMMARY: SBHU has been granted a temporary order, and has requested a permanent order, exempting it from the provisions of section 9(a) to relieve SBHU from any ineligibility resulting from the employment of three individuals who are subject to injunctions in Commission enforcement actions (the "Subject Employees").

FILING DATES: The application was filed on January 30, 1990, and amended on February 6, 1990, February 13, 1990, and March 27, 1990.

HEARING OR NOTIFICATION OF HEARING:

A permanent order granting the application will be issued unless the SEC orders a hearing or extends the temporary exemption. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 27, 1990, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, A. George Saks, Managing Director and General Counsel, Smith Barney, Harris Upham & Co., Inc., 1345

Avenue of the Americas, New York, New York 10105..

FOR FURTHER INFORMATION CONTACT:

Thomas G. Sheehan, Staff Attorney, (202) 272-7324 or Max Berueffy, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. SBHU is a securities and investment banking firm with over 100 domestic and international branch offices. SBHU is also an investment adviser registered with the Commission. SBHU serves as (a) investment adviser and principal underwriter to Vantage Money Market Funds, an open-end management investment company which has approximately \$1.2 billion under management in two portfolios: (b) investment adviser to The Inefficient-Market Fund, Inc., a closed-end management investment company, with approximately \$44 million under management; (c) sub-investment adviser to the following registered investment companies: Smith Barney Equity Funds, Inc.; Smith Barney Funds, Inc.; and Smith Variable Account Funds (the "Smith Barney Funds"); (d) principal underwriter to the following registered open-end management investment companies with approximately \$5.6 billion in assets: The Smith Barney Funds; National Liquid Reserves, Inc.; The Muni Bond Funds; and the Tax Free Money Fund, Inc.; and (e) a depositor and principal underwriter of numerous unit investment trusts.

2. Smith Barney, Inc. is the direct parent corporation of SBHU. Smith Barney, Inc. has other direct subsidiaries that are registered investment advisers to registered investment companies.

3. Primerica Corporation, a financial services and specialty retailing company whose shares are listed on the New York Stock Exchange, is SBHU's ultimate parent corporation. Primerica has other indirect subsidiaries which are broker-dealers as well as depositors of, and investment advisers to, registered investment companies.

4. Applicant currently employs three individuals subject to securities-related injunctions, Joseph S. Schreck, Joel L. Halpern, and John W. Kelsey.

5. Schreck is currently the manager of SBHU's Morristown, New Jersey branch office and has served in that capacity

since joining SBHU in 1976. In April, 1983, Schreck entered into a consent injunction in a suit brought by the Commission alleging insider trading in violation of sections 10(b) and 14(e) of the Securities Exchange Act of 1934 and Rule 10b-5.

6. Kelsey is a registered representative in SBHU's Houston-Galleria branch office. He has been employed by SBHU since 1989. In July, 1975, Kelsey consented to the entry of a permanent injunction in a suit filed by the Commission alleging insider trading in violation of section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5.

7. Halpern is a registered representative in SBHU's Boca Raton, Florida branch office. He has been employed by SBHU since 1988. In November, 1972, Halpern was permanently enjoined in a suit brought by the Commission alleging net capital violations. As a result of the injunction, Halpern was barred by the Commission on April 28, 1975 from associating with a broker, dealer or investment adviser, with a right to reapply after two years.

8. The existence of the injunctions against the Subject Employees disables SBHU, under section 9(a)(3) of the Act, from acting as an investment adviser to a registered investment company, as a principal underwriter of a registered open-end investment company, or as a principal underwriter or depositor of a registered unit investment trust, unless an exemption is obtained pursuant to section 9(c).

9. Although SBHU has known of the existence of each the injunctions for some time, it did not become aware of their significance under section 9(a) until recently. Until the week of January 29, 1990, SBHU did not have in place adequate compliance procedures to review for section 9(a) purposes the prospective or continued employment of any individual subject to an injunction or conviction.

10. Since the entry of their respective injunctions, none of the Subject Employees has been subject to any similar actions, or been enjoined by a court or sanctioned by the Commission, any self-regulatory organization, or any state securities commission. Senior members of SBHU's Compliance and Law Departments have reviewed each of the Subject Employees' records during the course of his employment with SBHU and found it to be satisfactory. Except as set forth below with respect to Halpern, *see* ¶11, there have been no customer complaints against any of the Subject Employees since the injunctions were entered, nor, to SBHU's

knowledge, is there any basis for such a complaint.

11. There have been two post-injunction customer complaints and one state court action against Halpern relating to activities at a former firm, all involving allegations that Halpern recommended investments that were unsuitable for the customer. Both customer complaints remain unresolved. Halpern has not yet filed an answer in the state court action, which was filed in December, 1989. Halpern's former employer has informed SBHU that it supports Halpern in all three cases.

12. None of the Subject Employees is employed by any Smith Barney, Inc. affiliate other than SBHU, nor serves in any capacity related to the provision of investment advice to any registered investment company or to acting as principal underwriter or depositor to any registered open-end investment company, or as principal underwriter or depositor to any registered unit investment trust. None of the Subject Employees is an officer of SBHU or serves in a policy making role. None of the Subject Employees has any relation to SBHU's management or administrative activities relating to registered investment companies.

13. The conduct that precipitated the injunctive actions against the Subject Employees was unrelated in any way to the provision of investment advice or the acting as depositor or underwriter for any investment company.

14. Schreck was employed by SBHU when the consent injunction was entered against him, and SBHU was fully aware of the proceedings against him and of his consent to an injunction. Kelsey and Halpern fully disclosed the existence of the injunctions to SBHU prior to becoming employed by SBHU, and, through SBHU's compliance department, filed an application under section 19(h) of the Securities Exchange Act of 1934 to associate with SBHU as a registered representative. In each case, the New York Stock Exchange, SBHU's primary self-regulatory organization, authorized the association.

15. The Subject Employees have complied with the terms of the injunctions.

16. Pending disposition of SBHU's request for temporary relief, SBHU has required each of the Subject Employees to take a leave of absence with pay. If temporary relief is granted, SBHU will permit each to return to work on a normal basis pending determination as to permanent relief.

17. SBHU, together with its parent corporation Smith Barney, Inc., and all Smith Barney, Inc. subsidiaries, have now amended their compliance

procedures to ensure that prospective employees subject to a statutory disqualification under section 9(a) are not employed by any Smith Barney Company involved in registered investment company activities as a principal underwriter, depositor or investment adviser, until all section 9(c) issues are resolved. These new procedures include immediate notification of the Law Department whenever a statutory disqualification is disclosed in an employment application for registered representatives, and background investigations for prospective employees who are not required to be registered.

18. After recognizing the significance of the injunctions under section 9(a), SBHU had the investment companies for which it serves as investment adviser cease accruing investment advisory fees for a total of three days, and, since that time, has had each registered investment company portfolio for which it is either the investment advisor or sub-advisor accrue such fees into various escrow accounts.

Applicant's Legal Analysis

1. Each of the Subject Employees is ineligible to serve or act as an investment adviser, principal underwriter or depositor for a registered investment company. Each of these individuals is an employee, and thus an "affiliated person" of SBHU. SBHU is a company any affiliated person of which is ineligible, by section 9(a)(2) of the Act, to serve or act in the capacities enumerated. As a result, section 9(a) would bar SBHU from acting in these capacities unless it obtains an exemption under section 9(c).

2. The prohibitions of section 9(a) are unduly or disproportionately severe as applied to SBHU, and the conduct of SBHU does not make it against the public interest or the protection of investors to grant the application.

3. The activities that gave rise to the injunctions are not sufficiently related to SBHU or to the investment companies for which SBHU acts as investment adviser, principal underwriter, or depositor. Furthermore, there is no basis to assert that the employment of the Subject Employees may affect SBHU's performance of its responsibilities to any investment company.

4. Because the activities that gave rise to the injunction are remote in time and there has been no indication of subsequent wrongdoing, it would be unduly and disproportionately severe to permit the injunctions to interrupt the sound investment advisory, underwriting, and depositor services that have been made available to the

shareholders of the investment companies which the Applicant serves.

5. A denial of the application would harm many of SBHU's employees and shareholders, is not necessary for the protection of investors in the investment companies served by the Applicant, and is potentially a substantial detriment to the value of the shareholders' investments. Neither SBHU nor any of the Subject Employees is the type of person with "unsavory records and few scruples" against whom section 9(a) is directed.

6. The balance of fairness requires that the application be granted. In particular, SBHU argues that if the exemption is not granted, it would be required to terminate the employment of the Subject Employees in order to continue the affected business. SBHU contends that such a result would be manifestly unfair since each of the Subject Employees has fulfilled the terms of his sanction, has committed no additional wrongdoing since the respective injunctions were entered, and has performed his duties satisfactorily over the years.

Conditions to the Requested Relief

As conditions of the requested relief:

1. Applicant will continue to escrow all investment advisory fees until the Commission acts on SBHU's request for a permanent exemption. Amounts paid into the escrow accounts will be disbursed to the investment companies or to SBHU upon resolution of this Application and discussion with the investment companies involved.

2. SBHU will not employ any of the Subject Employees in any capacity related directly to the provision of investment advisory services for registered investment companies or to acting as a principal underwriter for a registered open-end investment company or as a principal underwriter or depositor for a unit investment trust without first making further application to the Commission.

3. SBHU will take appropriate steps to confirm that there are no other employees subject to a Statutory Disqualification. These steps may include reviewing the personnel files of other employees, requesting employees to confirm that they are not subject to a Statutory Disqualification, or utilizing some other combination of procedures that may vary depending on the level and type of employee. SBHU will notify the Commission in writing when these steps have been completed.

4. SBHU will file as an exhibit to this application a representation, attested to by its General Counsel and/or Chief

Executive Officer, on behalf of him or herself and SBHU, stating that he or she has reviewed the compliance procedures described in the application, that those procedures have been fully implemented, and that they are reasonable and appropriate to prevent persons subject to a Statutory Disqualification from becoming affiliated with SBHU in the future.

Temporary Order

The Commission has considered the matter and finds, under the standards of section 9(c), that Applicant has made the necessary showing to justify granting a temporary exemption.

Our decision to grant the requested relief is based primarily on two factors. First, the individuals creating the statutory disqualification have not been, and (without further Commission action) will not be, engaged in investment adviser or investment company activities. Second, SBHU has represented that it is correcting the deficiencies in its compliance procedures that allowed these violations of section 9(a) to occur. It is also relevant to our determination that each of these employees fully disclosed the existence of the injunctions to SBHU on a timely basis, and was authorized by action of the New York Stock Exchange, SBHU's primary self-regulatory organization, to associate with SBHU as a registered representative. The Commission's decision to allow SBHU to continue to employ these individuals in non-investment adviser, non-investment company activities is thus consistent with the actions of the self-regulatory organization.

Although the Commission has determined to grant temporary relief, we must express our great concern with SBHU's compliance system, which allowed multiple violations of section 9(a) to go undetected for an extended time period. We also take issue with SBHU's disregard for the seriousness of the violations that created the section 9(a) disability. In particular, we strongly disagree with SBHU's contention that the Subject Employees are not the types of people against whom section 9(a) is directed. To the contrary, the violations some of these individuals have committed, insider trading and other fraudulent activity, are precisely the types of violations that prompted Congress to enact the section 9(a) bar. Accordingly, our decision to grant relief in this case should not be read as an indication that the Commission views violations of section 9(a) as unimportant, or that we would regard any repeat of this problem at SBHU with

anything other than the most serious concern.

Accordingly, *it is ordered*, under section 9(c) of the 1940 Act, that Applicant is hereby temporarily exempted from the provisions of section 9(a) until the Commission takes final action on the application for an order granting Applicant a permanent exemption from the provisions of section 9(a).

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 90-8006 Filed 4-5-90; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Request for Review of Noise Compatibility Program for Fresno Air Terminal, Fresno, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Fresno Air Terminal under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150 by City of Fresno, California. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Fresno Air Terminal were in compliance with applicable requirements effective February 7, 1990. The proposed noise compatibility program will be approved or disapproved on or before September 19, 1990.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is March 23, 1990. The public comment period ends May 22, 1990.

FOR FURTHER INFORMATION CONTACT: David L. Cross, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010-1303, Telephone 415/876-2779. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Fresno Air

Terminal which will be approved or disapproved on or before September 19, 1990. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Fresno Air Terminal, effective on March 23, 1990. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under Section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before September 19, 1990.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, Section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP-600, 15000 Aviation Boulevard, Room 6E25, Hawthorne, California 90261.

Federal Aviation Administration, San Francisco Airports District Office, SFO-600, 831 Mitten Road, Burlingame, California 94010-1303.
Mr. Terry O. Cooper, Director of Transportation, City of Fresno, 2401 North Ashley Way, Fresno, California 93727-1504.

Questions may be directed to the individual named above under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Hawthorne, California on March 23, 1990.

Herman C. Bliss,

Manager, Airports Division.

[FR Doc. 90-7954 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Greater Rockford Airport, Rockford, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Greater Rockford Airport Authority for Greater Rockford Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is March 23, 1990.

FOR FURTHER INFORMATION CONTACT: Prescott C. Snyder, Federal Aviation Administration, Great Lakes Region, Airports Division, AGL-611.1, 2300 East Devon Avenue, Des Plaines, Illinois 60018, (312) 694-7538.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Greater Rockford Airport are in compliance with applicable requirements of part 150, effective March 23, 1990.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community,

government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related description submitted by the Greater Rockford Airport Authority. The specific maps under consideration are the noise exposure maps: Noise Exposure Map, 1989 (Unabated Conditions) and Noise Exposure Map, 1994 (Unabated Conditions) following page I-11 in the submission. The FAA has determined that these maps for Greater Rockford Airport are in compliance with applicable requirements. This determination is effective on March 23, 1990. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with

those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, Great Lakes Region, Airports Division Office, 2300 East Devon Avenue, Room 269, Des Plaines, Illinois 60018

Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 258, Des Plaines, Illinois 60018

Greater Rockford Airport Authority, Greater Rockford Airport, 2 Airport Circle, Rockford, Illinois 61109

Questions may be directed to the individual named above under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Des Plaines, Illinois on March 23, 1990.

W. Robert Billingsley,

Assistant Manager, Airports Division, Great Lakes Region.

[FR Doc. 90-7955 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 90-02-EX-NO2]

Consulier Industries, Inc.; Grant of Petition for Temporary Exemption From Standard No. 208

This notice grants the petition by Consulier Industries, Inc., of Riviera Beach, Fla., for a temporary exemption for its GTP model from the passive restraint requirements of Federal Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems*. The basis of the petition was that compliance would cause it substantial economic hardship.

Notice of receipt of the petition was published on February 16, 1990, and an opportunity afforded for comment (55 FR 5712).

Consulier was organized in June 1985, and was in the research and development stage of the GTP until June 30, 1989. To date, it has produced 19 prototype vehicles. Before September 1 1989, it had manufactured four production cars, and one has been completed since that date. Consulier

believes that the GTP meets all applicable Federal motor vehicle safety standards, except for the passive restraint requirements of Standard No. 208. It has asked for only a 6-month exemption from the standard, and expects to complete 20 to 25 cars while the exemption is in effect.

Since its inception, Consulier has a cumulative net loss of \$4,292,364. It argued that any further delay in production would cause it substantial economic hardship consisting of revenue losses of \$60,000 a week. The lost revenue could threaten its existence, based on current and projected levels of production and results of operations.

The petitioner submitted that it had made a good faith effort to comply with the passive restraint requirements. It has been engaged since 1988 in researching and prototyping such a system, but determined that to develop and engineer its own system was beyond its financial and technical capabilities. A change in the existing front seat belt system would have required a complete redesign of the door frame configuration. As an all-composite body/chassis is used in the GTP, an extensive modification of existing molds would have been required. Accordingly, Consulier negotiated with Chrysler Corporation to purchase air bag assemblies for adaptation and use in the GTP. The necessary components were not delivered within the time frame that Consulier expected, but it anticipates that the parts will be shipped from Chrysler shortly and vehicles will be in full compliance within the exemption period. Part of the time of the exemption period will be spent in completing the development of a modified wiring harness for use with the air bag system.

Consulier argued that an exemption would be in the public interest, and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. It is the type of small manufacturer (50 employees) for which the temporary exemption authority is intended to help. An exemption would allow "the production of a unique vehicle increasing consumer selection alternatives, at least to a small degree in the limited two-seat sport car market." During the exemption period, the vehicles produced will be equipped with a manual restraint system that complies with the previous requirements of Standard No. 208.

No comments were received on the petition.

Given its cumulative net loss exceeding \$4,000,000, and the need to

generate revenues to prohibit further losses of a crippling nature, Consulier has made a convincing argument that to require immediate compliance with the passive restraint requirements of Standard No. 208 would cause it substantial economic hardship within the meaning of the statute.

In spite of its limited resources, Consulier has been able to engineer its vehicles to accept an air bag restraint system. However, its supplier has failed to deliver components necessary for compliance within the time frame expected. It is evident from Consulier's argument that it has made a good faith effort to comply with the standard, and only a situation apparently beyond its control has prevented it from doing so.

The exemption would allow a small manufacturer to continue in existence. The term of the exemption is short, 6 months, and the number of vehicles subject to it only about two dozen.

In consideration of the foregoing, it is hereby found that compliance with the passive restraint requirements would create substantial economic hardship for the petitioner, and that petitioner has made a good faith effort to comply with the standard. It is further found that a temporary exemption is consistent with the public interest and the objectives of the National Traffic and Motor Vehicle Safety Act.

Accordingly, petitioner is hereby granted NHTSA Temporary Exemption No. 90-2 from section S4.1.4 of 49 CFR 571. 208 Motor Vehicle Safety Standard No. 208 *Occupant Restraint Systems*, expiring October 1, 1990.

Authority: 15 U.S.C. 1410; delegation of authority at 49 CFR 1.50.

Issued on April 2, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90-7939 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department

Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0020.

Form Number: ATF F 9 (5320.9).

Type of Review: Extension.

Title: Application and Permit for Permanent Exportation of Firearms.

Description: This form is used to move National Firearms Act weapons legally into export channels and serves as a vehicle to allow either the removal of the weapon from the National Firearms Registration and Transfer Record or to the collection of an excise tax. It is used by firearms manufacturers, exporters and others to obtain a benefit and by the Treasury Department to determine/collect taxes.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 300.

Estimated Burden Hours Per Response: 3 hours, 24 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,020 hours.

OMB Number: 1512-0026.

Form Number: ATF F 3 (5320.3).

Type of Review: Extension.

Title: Application for Tax Exempt Transfer of Firearms and Registration of Special (Occupational) Taxpayer.

Description: This application allows a Special Taxpayer Firearms licensee to transfer National Firearms Act firearms without payment of tax to another eligible special taxpayer upon approval of ATF. The approved form is proof that the firearms is legally held and legally transferred to the current holder of the firearm. Conversely, lack of the form could indicate illegal possession.

Respondents: Individuals or households, State of local governments, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Response: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 15,000 hours.

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and

Budget, Room 3001, New Executive Office Building, Washington, DC 20503
 Lois K. Holland,
Departmental Reports, Management Officer.
 [FR Doc. 90-7972 Filed 4-5-90; 8:45 am]
 BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: April 2, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
 Form Number: None.
 Type of Review: New Collection.
 Title: Focus Groups for the 1990 Taxpayer Opinion Survey.
 Description: The data collected will be used to refine parts of the questionnaire for the upcoming 1990 Taxpayer Opinion Survey, and to provide in-depth qualitative information on topics of interest to IRS.
 Respondents: Individuals or households, Small businesses or organizations.
 Estimated Number of Respondents: 800.

Estimated Burden Hours Per Response: 3 hours.
 Frequency of Response: One-time group discussion.
 Estimated Total Reporting Burden: 307 hours.

OMB Number: 1545-0790.
 Form Number: 8082.
 Type of Review: Extension.
 Title: Notice of Inconsistent Treatment or Amended Return (Administrative Adjustment Request (AAR)).
 Description: Internal Revenue Code section 6222 and 6227 require partners to notify IRS by filing Form 8082 when they: (1) Treat partnership items inconsistent with the partnership's treatment (6222), and (2) change previously reported partnership items (6227). The data is used to verify consistent treatment of partnership

items between partners and partnerships.

Respondents: Individual or households, Farms, Businesses or other for-profit.

Estimated Number of Respondents: 10,600.

Estimated Burden Hours Per Response/Recordkeeping:

Recordkeeping, 4 hours, 18 minutes.

Learning about the law or the form, 24 minutes.

Preparing and sending, the form to IRS, 29 minutes.

Frequency of Response: Annually.

Estimated Total Recordkeeping/Reporting Burden: 55,014 hours.

Clearance officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
 [FR Doc. 90-7973 Filed 4-5-90; 8:45 am]
 BILLING CODE 4830-01-M

Customs Service

[T.D. 90-29]

Cancellation With Prejudice of Individual Customs Broker License No. 6471; Leonard H. Davis

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that the Commissioner of Customs, on March 14, 1990, pursuant to section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and § 111.51(b) of the Customs Regulations, as amended (19 CFR 111.51(b)), cancelled with prejudice the individual broker's license no. 6471 issued to Leonard H. Davis, New York, on March 12, 1980.

Dated: April 2, 1990.
 Victor G. Weeren,
Director, Office of Trade Operations.
 [FR Doc. 90-7956 Filed 4-5-90; 8:45 am]
 BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private, Non-Profit Organizations in Support of International and Cultural Activities

The Office of Private Sector Programs of the United States Information Agency (USIA) announces an Initiative Grant program to U.S. nonprofit organizations for projects that support the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement before making inquiries to the Office.

General Information

The Office of Private Sector Programs of the United States Information Agency announces a program to encourage through limited grants to nonprofit institutions, increased private sector commitment to and involvement in international exchanges.

The office is a networking instrument that seeks to link the international exchange interests of U.S. private sector nonprofit institutions and organized groups with their counterparts abroad, preferably on a long-term basis.

Projects must feature an international people-to-people component, have a professional and cultural focus, and make a substantial contribution to long-term communication and understanding between the United States and the countries specified in this announcement.

The Office's Program focus on substantive issues of mutual interest, and the projects it support should be intellectual and cultural, not technical in nature. Each private sector activity must maintain a non-political character and shall represent in a balanced way the diversity of American political, social, and cultural life. Programs under the authority of the Bureau of Educational and Cultural Affairs shall maintain scholarly integrity and meet the highest professional standards. The participation of respected universities and/or professional associations and other major cultural institutions is encouraged.

Request for Proposals for an Initiative Grant Project

A Program To Support Post-Secondary Educational Ties in North Africa, the Near East and South Asia [NEA]

The Office of Private Sector Programs of the United States Information Agency announces the availability of an initiative grant open to U.S. not-for-profit institutions to develop and

administer a three week multi-site project which will discuss and explore current regional and country specific issues relating to post secondary education, and will attempt to expand and promote international cooperation and linkages between U.S. and NEA institutions.

The project should be designed for up to 13 senior level Ministry of Education officials, and should provide delegates an overview of the U.S. post-secondary higher education system. Topics for discussion and observation should include: the decentralized and diverse character of the system; a review of curricula for social and natural sciences courses and vocational programs; a review of university management structures and administrative systems; discussions of hiring procedures and systems for merit promotion; the role that educational consortia play in U.S. and international education efforts; other relevant topics. Delegates will be selected by USIS officers at American embassies in participating countries.

Basic Application Guidelines

The Office of Private Sector Programs offers the following guidelines to prospective grant applicants:

Projects supported by the Office of Private Sector programs are intended to further USIA goals by assisting U.S. private sector organizations in their efforts to advance international understanding in areas identified as important for bilateral relations. The Office welcomes clearly defined projects and requires that USIS posts be involved in the nomination of foreign participants, with a view toward building ongoing institutional linkages between foreign and U.S. institutions.

Programs may take place anywhere in the United States or, in some instances, overseas in general accordance with the USIA program design.

Programs taking place in the United States should feature some geographic diversity in order to expose foreign participants to various regions.

Proposals should explicitly deal with translation and interpretation requirements, if any.

The Office does not support conferences or symposia except insofar as they are integral parts of a larger project that meets the USIA objectives defined in a request for proposals. In applications for funds to cover seminar costs as part of a larger project, proposals should include a detailed agenda, clearly identified speakers/presenters (and the professional/academic credentials thereof), and a careful explanation of the role of participants from other countries in the

conference. The participation of a respected university or scholarly organization would in many cases be advantageous. Further, the themes addressed in such meetings must be of long-term importance rather than focussed on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution the conference or symposium will yield. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered, nor does the Office support film festivals.

In most cases, the Office will not provide funding merely to enable foreign participants to attend a conference on a few days' visit, and no funding is available simply to send U.S. citizens to conferences overseas.

On receipt of a letter of interest from institutions, this office will send out a concept paper and a grant application package that includes additional guidelines.

Institutions must submit sixteen copies of the final grant proposal.

Funding and Budget Requirements

The Office of Private Sector Programs requires co-funding with grantees in all projects. Proposals with less than 30% cost-sharing must provide particularly strong justification even to receive consideration.

Most funding assistance is limited to participant travel and per diem requirements with modest contributions to defray administrative costs (salaries, benefits, other direct and indirect costs), which may not exceed 20% of the total funds requested. The grantee institution may wish to share any of these expenses.

Grant applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects. Following is an example of the required format:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc.			
Total.....	\$	\$	\$

USIA can provide between \$80,000-\$100,000 funding for this project.

Application deadlines

In order to receive grant application materials, prospective applicants should express their interest in writing no later than three weeks from the publication

date of this announcement, to the Office of Private Sector Programs at the address given below. On receipt of a letter of interest, E/PI will forward the project concept paper and all necessary application materials. Final proposals, complete with all necessary documentation and forms, will be due by close of business, six weeks from the publication date of this announcement. Incomplete proposals will be reviewed.

Proposals must be in accordance with Project Proposal Information Requirements (OMB #31180175).

For additional information and planning assistance relating to this grant award prospective applicants should contact:

Michael E. Weider, Initiative Grants and Bilateral Accords Division, Office of Private Sector Programs, United States Information Agency, 301 4th Street, SW., E/P Room 220, Washington, DC 20547.

Attention: Post-Secondary Educational Ties.

Dated: March 29, 1990.

Stephen J. Schwartz,

Director, Office of Private Sector Programs.

[FR Doc. 90-7940 Filed 4-5-90; 8:45 am]

BILLING CODE 8230-01-M

Grants Program for Private, Non-Profit Organizations in Support of International and Cultural Activities

The Office of Private Sector Programs of the United States Information Agency (USIA) announces an Initiative Grant program to U.S. nonprofit organizations for projects that support the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement before making inquiries to the Office.

General Information

The Office of Private Sector Programs of the United States Information Agency announces a program to encourage through limited grants to nonprofit institutions, increased private sector commitment to and involvement in international exchanges.

The Office is a networking instrument that seeks to link the international exchange interests of U.S. private sector nonprofit institutions and organized groups with their counterparts abroad, preferably on a long-term basis.

Projects must feature an international people-to-people component, have a professional and cultural focus, and make a substantial contribution to a long-term communication and

understanding between the United States and the countries specified in this announcement.

The Office's programs focus on substantive issues of mutual interests, and the projects it support should be intellectual and cultural, not technical in nature. Each private sector activity must maintain a non-political character and shall present in a balanced way the diversity of American political, social, and cultural life. Programs under the authority of the Bureau of Educational and Cultural Affairs shall maintain scholarly integrity and meet the highest professional standards. The participation of respected universities and/or professional associations and other major cultural institutions is encouraged.

Request for Proposals for an Initiative Grant Project

Cultural Heritage and Potrimony Exchange Project

The Office of Private Sector Programs of the United States Information Agency announces the availability of an initiative grant open to U.S. not-for-profit institutions to develop and administer a two-week workshop/study tour for 10 senior level Ministry of Culture Officials from North Africa, the Near East and South Asia to explore and discuss current regional and bilateral issues relating to cultural property, in an attempt to expand and develop regional and international cooperation in this area.

The project should analyze the 1970 UNESCO Convention on Cultural Property and the U.S. Cultural Property Act of 1983, each designed to assist countries in protecting cultural heritage and property. The program should allow delegates to discuss and observe current conservation and preservation techniques used in the U.S., and should expand or establish collaborative relationships between U.S. and foreign institutions. Delegates will be selected by USIS officers at American embassies in participating countries.

Basic Application Guidelines

The Office of Private Sector Programs offers the following guidelines to prospective grant applicants:

Projects supported by the Office of Private Sector programs are intended to further USIA goals by assisting U.S. private sector organizations in their efforts to advance international understanding in areas identified as important for bilateral relations. The Office welcomes clearly defined projects and requires that USIS posts be involved in the nomination of foreign

participants, with a view toward building ongoing institutional linkages between foreign and U.S. institutions.

Programs may take place anywhere in the United States or, in some instances, overseas in general accordance with the USIA program design.

Programs taking place in the United States should feature some geographic diversity in order to expose foreign participants to various regions.

Proposals should explicitly deal with translation and interpretation requirements, if any.

The Office does not support conferences or symposia except insofar as they are integral parts of a larger project that meets the USIA objectives defined in a request for proposals. In applications for funds to cover seminar costs as part of a larger project, proposals should include a detailed agenda, clearly identified speakers/presenters (and the professional/academic credentials thereof), and a careful explanation of the role of participants from other countries in the conference. The participation of a respected university or scholarly organization would in many cases be advantageous. Further, the themes addressed in such meetings must be of long-term importance rather than focussed on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution the conference or symposium will yield. Projects that duplicate what is routinely carried out by private sector and/or public sector operations will not be considered, nor does the Office support film festivals.

In most cases, the Office will not provide funding merely to enable foreign participants to attend a conference on a few days' visit, and no funding is available simply to send U.S. citizens to conferences overseas.

On receipt of a letter of interest from institutions, this office will send out a concept paper and a grant application package that includes additional guidelines.

Institutions must submit sixteen copies of the final grant proposal.

Funding and Budget Requirements

The Office of Private Sector Programs requires co-funding with grantees in all projects. Proposals with less than 30% cost-sharing must provide particularly strong justification even to receive consideration.

Most funding assistance is limited to participant travel and per diem requirements with modest contributions to defray administrative costs (salaries,

benefits, other direct and indirect costs), which may not exceed 20% of the total funds requested. The grantee institution may wish to share any of these expenses.

Grant applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects. Following is an example of the required format:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc.			
Total.....	\$	\$	\$

USIA can provide approximately \$50,000-\$65,000 for the Cultural Heritage Project.

Application Deadlines

In order to receive grant application materials, prospective applicants should express their interest in writing no later than three weeks from the publication date of this announcement, to the Office of Private Sector Programs at the address given below. On receipt of a letter of interest, E/PI will forward the project concept paper and all necessary application materials. Final proposals, complete with all necessary documentation and forms, will be due by close of business six weeks from the publication date of this announcement. Incomplete or late proposals will not be reviewed.

Proposals must be in accordance with Project Proposal Information Requirements (OMB #31180175).

For additional information and planning assistance relating to this grant award prospective applicants should contact:

Michael E. Weider, Initiative Grants and Bilateral Accords Division, Office of Private Sector Programs, United States Information Agency, 301 4th Street, SW., E/P Room 220, Washington, DC 20547.
Attention: Cultural Heritage Project/NEA.

Dated: March 29, 1990.

Stephen J. Schwartz,
Director, Office of Private Sector Programs.
[FR Doc. 90-7941 Filed 4-5-90; 8:45 am]
BILLING CODE 5230-01-M

Grants Program for Private, Non-Profit Organizations in Support of International and Cultural Activities

The Office of Private Sector Programs of the United States Information Agency

(USIA) announces an Initiative Grant program to U.S. nonprofit organizations for projects that support the aims of the Bureau of Educational and Cultural Affairs. Interested applicants are urged to read the complete **Federal Register** announcement before making inquiries to the Office.

General Information

The Office of Private Sector Programs of the United States Information Agency announces a program to encourage through limited grants to nonprofit institutions, increased private sector commitment to and involvement in international exchanges.

The Office is a networking instrument that seeks to link the international exchange interests of U.S. private sector nonprofit institutions and organized groups with their counterparts abroad, preferably on a long-term basis.

Projects must feature an international people-to-people component, have a professional and cultural focus, and make a substantial contribution to long-term communication and understanding between the United States and the countries specified in this announcement.

The Office's programs focus on substantive issues of mutual interest, and the projects it support should be intellectual and cultural, not technical in nature. Each private sector activity must maintain a non-political character and shall represent in a balanced way the diversity of American political, social, and cultural life. Programs under the authority of the Bureau of Educational and Cultural Affairs shall maintain scholarly integrity and meet the highest professional standards. The participation of respected universities and/or professional associations and other major cultural institutions is encouraged.

Request for Proposals for an Initiative Grant Project

Challenges of Environmental Management in the Maghreb and the United States

The Office of Private Sector Programs of the U.S. Information Agency announces the availability of an initiative grant open to U.S. not-for-profit institutions to develop and administer a 3-week study/observational tour for up to 12 environmental managers from the Maghreb region of North Africa; and a two-week follow-up exchange to the Maghreb by a delegation of up to 4 U.S. environmental specialists.

The project should be designed to facilitate dialogue on global

environmental concerns like the "Greenhouse Effect" and decertification, and should familiarize participants with successful and unsuccessful initiatives taken by the U.S. to deal with issues such as: Environmental planning and toxic waste management; urbanization and its effects on the environment; watershed management and maintenance of wilderness areas. Delegates will be selected by USIS officers at American embassies in participating countries.

Basic Application Guidelines

The Office of Private Sector Programs offers the following guidelines to prospective grant applicants:

Projects supported by the Office of Private Sector programs are intended to further USIA goals by assisting U.S. private sector organizations in their efforts to advance international understanding in areas identified as important for bilateral relations. The Office welcomes clearly defined projects and requires that USIS posts be involved in the nomination of foreign participants, with a view toward building ongoing institutional linkages between foreign and U.S. institutions.

Programs may take place anywhere in the United States or, in some instances, overseas in general accordance with the USIA program design.

Programs taking place in the United States should feature some geographic diversity in order to expose foreign participants to various regions.

Proposals should explicitly deal with translation and interpretation requirements, if any.

The Office does not support conferences or symposia except insofar as they are integral parts of a larger project that meets the USIA objectives defined in a request for proposals. In applications for funds to cover seminar costs as part of a larger project, proposals should include a detailed agenda, clearly identified speakers/presenters (and the professional/academic credentials thereof), and a careful explanation of the role of participants from other countries in the conference. The participation of a respected university or scholarly organization would in many cases be advantageous. Further, the themes addressed in such meetings must be of long-term importance rather than focused on current events or short-term issues. In every case, a substantial rationale must be presented as part of the proposal, one that clearly indicates the distinctive and important contribution the conference or symposium will yield. Projects that duplicate what is routinely carried out

by private sector and/or public sector operations will not be considered, nor does the Office support film festivals.

In most cases, the Office will not provide funding merely to enable foreign participants to attend a conference on a few days' visit, and no funding is available simply to send U.S. citizens to conferences overseas.

On receipt of a letter of interest from institutions, this office will send out a concept paper and a grant application package that includes additional guidelines.

Institutions must submit sixteen copies of the final grant proposal.

Funding and Budget Requirements

The Office of Private Sector Programs requires co-funding with grantees in all projects. Proposals with less than 30% cost-sharing must provide particularly strong justification even to receive consideration.

Must funding assistance be limited to participant travel and per diem requirements with modest contributions to defray administrative costs (salaries, benefits, other direct and indirect costs), which may not exceed 20% of the total funds requested. The grantee institution may wish to share any of these expenses.

Grant applications should demonstrate substantial financial and in-kind support using a three-column format that clearly displays cost-sharing support of proposed projects. Following is an example of the required format:

Line item	USIA support	Cost sharing	Total
Travel, per diem, etc.			
Total.....	\$	\$	\$

USIA can provide approximately \$100,000—\$125,000 funding for the Environmental Project.

Application Deadlines

In order to receive grant application materials, prospective applicants should express their interest in writing no later than three weeks from the publication date of this announcement, to the Office of Private Sector Programs at the address given below. On receipt of a letter of interest, E/PI will forward the project concept paper and all necessary application materials. Final proposals, complete with all necessary documentation and forms, will be due by close of business six weeks from the publication date of this announcement.

Incomplete or late proposals will not be reviewed.

Proposals must be in accordance with Project Proposal Information Requirements (OMB #31180175).

For additional information and planning assistance relating to this grant award prospective applicants should contact:

Michael E. Weider, Initiative Grants and Bilateral Accords Division, Office of Private Sector Programs, United States Information Agency, 301 4th Street, SW., E/P Room 220, Washington, DC 20547.

Attention: Environmental Issues/Maghreb Project.

Dated: March 29, 1990.

Stephen J. Schwartz,

Director, Office of Private Sector Programs.

[FR Doc. 7942 Filed 4-5-90; 8:45 am]

BILLING CODE 8220-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Environmental Hazards; Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463, section 10(a)(2), that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Room 119, Washington, DC 20420 on May 16-17, 1990. The Committee will review scientific and medical literature relating to the issue of whether there exists a significant statistical association between exposure to a herbicide containing dioxin and the subsequent development of disease.

The meeting will convene at 9 a.m. on May 16 and 8 a.m. on May 17 in room 119. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it

will be necessary for those wishing to attend to contact Mrs. Loretta Young Pines, Department of Veterans Affairs Central Office (phone 202/233-8019) prior to May 9, 1990.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Deputy Assistant General Counsel, (026B), room 1075B, Department of Veterans Affairs Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: March 19, 1990.

By direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90-7363 Filed 4-5-90; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 55, No. 67

Friday, April 6, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BARRY GOLDWATER SCHOLARSHIP AND EXCELLENCE IN EDUCATION FOUNDATION

TIME AND DATE: 2:00 pm, Tuesday, May 1, 1990.

PLACE: Dirksen Senate Office Building, Washington, DC 20510.

STATUS: The meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Report on results of Scholarship Review Panel.

- a. Discussion and consideration of scholarship candidates.
- b. Selection of Goldwater Scholars.

CONTACT PERSON FOR MORE

INFORMATION: Gerald J. Smith, Executive Secretary, Telephone: (202) 755-2312.

Gerald J. Smith,

Executive Secretary.

[FR Doc. 90-8126 Filed 4-4-90; 3:27 pm]

BILLING CODE 4738-91-M

CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 55, page 11106, March 26, 1990.

PREVIOUSLY ANNOUNCED DATE OF MEETING: March 28, 1990.

CHANGES: The meeting was cancelled.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207, 301-492-6800.

Dated: April 2, 1990.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-8125 Filed 4-4-90; 3:27 pm]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, April 3, 1990, the Corporation's Board of Directors determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Chairman L. William Seidman, concurred in by Director Robert L. Clarke (Comptroller of the Currency) and Director Salvatore R. Martoche (Acting Director of the Office of Thrift Supervision), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Memorandum and resolution re: Regulation implementing 12 U.S.C. 1823(k) relating to the override of state laws.

The Board further determined, by the same majority vote, that no notice of the change in the subject matter of the meeting earlier than March 30, 1990 was practicable.

Dated: April 4, 1990.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 90-8113 Filed 4-4-90; 1:38 pm]

BILLING CODE 6714-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 9:00 a.m., April 16, 1990.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.
2. Review of Arthur Andersen audit report for 1989.
3. Thrift Savings Plan activities report by the Executive Director.

CONTACT PERSON FOR MORE

INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: April 3, 1990.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 90-8141 Filed 4-4-90; 3:53 pm]

BILLING CODE 6760-01-M

Corrections

Federal Register

Vol. 55, No. 67

Friday, April 6, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV-89-202]

United States Standards for Grades of Canned Tomatoes

Correction

In rule document 90-5817 beginning on page 9412 in the issue of Wednesday, March 14, 1990, make the following corrections:

§ 52.5170 [Corrected]

1. On page 9415, in § 52.5170, in Table I, in the fourth column, the last entry should read "54.7".

2. On page 9416, in Table IV, in the third column, in the seventh entry "Slight" was misspelled.

Note: For an Agricultural Marketing Service correction to this document see the Rules section of the issue.

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 91050-0019]

Groundfish of the Gulf of Alaska

Correction

In rule document 90-2209 appearing on page 3230 in the issue of Wednesday, January 31, 1990, make the following corrections:

1. On page 3230, in the second column, under **SUPPLEMENTARY INFORMATION**, in the second line, after "sablefish" add "fishery".

2. On the same page, in the third column, in the second complete paragraph, in the second line, after "Alaska" add "groundfish".

BILLING CODE 1505-01-D

Register

**Friday
April 6, 1990**

Part II

Department of Labor

Employment and Training Administration

**20 CFR Parts 626, 636, 638, et al.
Redesignation and Revision of
Regulations for Job Corps Program
Under Title IV-B and Removal of
Comprehensive Employment and Training
Act Regulations; Final Rule**

DEPARTMENT OF LABOR

Employment and Training
Administration

20 CFR Parts 626, 636, 638, 675, 676,
677, 678, 679, 680, 684, 685, 688, and
689

RIN 1205-AA54

**Redesignation and Revision of
Regulations for Job Corps Program
Under Title IV-B; and Removal of
Comprehensive Employment and
Training Act Regulations**

AGENCY: Employment and Training
Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration of the Department of Labor is revising and redesignating the regulations for the operation of the Job Corps. The final rule updates legal citations and establishes a new, streamlined, system of procedures for implementing the Job Corps program. The final rule also removes obsolete regulations which had been promulgated under the repealed Comprehensive Employment and Training Act.

EFFECTIVE DATE: July 1, 1990 (i.e., the first day of Program Year 1990).

FOR FURTHER INFORMATION CONTACT: Mr. Timothy F. Sullivan, Chief, Division of Program Planning and Development, Office of Job Corps, Employment and Training Administration, U.S. Department of Labor, Room N4510, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 535-0556 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Introduction

The Employment and Training Administration (ETA) of the Department of Labor (DOL) is revising and redesignating the regulations for the operation of the Job Corps. On May 4, 1989, DOL published in the *Federal Register* a proposed rule to revise and redesignate the Job Corps regulations, inviting comments from interested persons through June 5, 1989. 54 FR 19316. The final rule set forth below is being promulgated after full consideration of the comments received in response to that notice of proposed rulemaking. It updates legal citations and establishes a new, streamlined system of procedures for implementing the Job Corps program.

B. The Job Corps Program

The Job Training Partnership Act (JTPA or the Act) was enacted in 1982 to

establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment. Pub. L. 97-300, 96 Stat. 1322 (October 12, 1982), as amended; 29 U.S.C. 1501 *et seq.* JTPA replaced and repealed the prior Comprehensive Employment and Training Act (CETA) (Pub. L. 93-203, 87 Stat. 839 (December 28, 1973), as amended) JTPA 184(a)(1).

The Job Corps, authorized under Title IV-B of JTPA, is a national program for economically disadvantaged young men and women. 29 U.S.C. 1691-1709. Originally established by Title I-A of the Economic Opportunity Act of 1964, Pub. L. 88-452, 78 Stat. 508 (August 20, 1964), the Job Corps program was continued under Title IV of CETA and thereupon by JTPA Title IV-B.

Residential and nonresidential Job Corps centers throughout the country provide students with intensive programs of education, vocational training (including pre-apprenticeship training), work experience, and other activities. See 29 U.S.C. 1698. The Job Corps assists eligible young individuals who can benefit from an intensive program, operated in a group setting, to become more responsive, employable, and productive citizens; and to do so in a way that contributes, where feasible, to the development of national, State, and community resources, and to the development and dissemination of techniques for working with the disadvantaged that can be widely utilized by public and private institutions and agencies. 29 U.S.C. 1691.

Job Corps centers are operated by a variety of organizations, both public and private. Many centers are operated under contract with private-for-profit and private nonprofit organizations, State and local government entities, Native American entities, community-based organizations, and JTPA recipients. Contract centers vary in size. 29 U.S.C. 1697.

Civilian Conservation Centers (CCCs) are Job Corps Centers operated by the Department of Interior and the Department of Agriculture under interagency agreements with DOL. CCCs are small centers located on public lands, primarily in southern and northwestern States. 29 U.S.C. 1697.

The Job Corps previously had been authorized under CETA, and, therefore, the Job Corps regulations currently are published at 20 CFR part 684, among the old CETA regulations. See 44 FR 64290 - (November 6, 1979); see also 29 CFR part

97a (1976), 40 FR 50812 (October 31, 1975). However, with the enactment of JTPA seven years ago, and based on the experience of the agency in administering the program, DOL herein revises the Job Corps regulations and redesignates them as a new 20 CFR part 638, among the JTPA regulations.

**C. Comments on Proposed Rule and
DOL's Responses**

The proposed rule to redesignate and revise the Job Corps regulations was published in the *Federal Register* 54 FR 19316 (May 4, 1989). Written comments from interested persons were invited through June 5, 1989. The comments, summarized by topic, and DOL's response to those comments, are set forth below.

Jobs Corps received 25 comments on the proposed rule. While most of the commentors recommended some specific changes, the general feeling was that the development of these new regulations will greatly improve the flexibility and effectiveness of the Job Corps program.

Five commentors made no recommendation for change. As a group, the other 20 interested parties recommended changes to 20 definitions and 23 sections of these regulations. As a result of these comments, Job Corps modified 13 definitions and 15 sections; it also added 2 definitions and 2 sections to the regulations. The comments and responses are as follows:

1. Section 638.200 Definitions

Definitions are addressed below, in alphabetical order.

a. "Absent Without Official Leave (AWOL)"

Commentors recommended that this definition be modified to provide separate wording for determining if residential and non-residential students are AWOL. Job Corps agrees that this is appropriate and has modified the definition to give timeframes for determining AWOL status as it applies to specific procedures for tort claims, federal employee compensation, pay status, and leave accrual.

b. "Center Director" and "Job Corps Director"

One commentor asked that the words "or the Center Director's (Job Corps Director's) designee" be deleted from the definition. Job Corps did not accept this recommendation as the proposed deletion would indicate that the Center Director (Job Corps Director) may not designate or delegate authority.

c. "Center Review Board"

Recommendations were made that the composition of this board be further defined and that the types of charges for which a board may be convened be stated. Job Corps agrees with these recommendations and has added the language "consisting of representatives from staff and students" and "for which the penalty of termination might be imposed."

d. "Civilian Conservation Center (CCC)"

Several commentors agreed that this definition should be strengthened where, in addition to student training, it states that these centers "may provide, * * * programs of work experience to conserve, develop, or manage public natural resources or public recreational areas * * *." Job Corps agrees with this recommendation and has replaced the word "may" with "shall."

e. "Contract Center"

A request was made that the words "Job Corps" be changed to "DOL" in reference to who was contracting with deliverers for the administration and operation of the center. Job Corps did not make this change as the definition of "Job Corps" specifically states that it is an agency of the Department of Labor (DOL).

f. "Corpsmember"

This name has been changed to "student" to more accurately reflect the educational environment of Job Corps and to facilitate linkages with traditional public and private agencies and institutions both within and outside of the academic and vocational training fields. Further, "corpsmember" has been replaced with "student" throughout the body of these regulations.

g. "Disruptive Home Life"

Job Corps agrees with the recommendation that this eligibility criterion be modified to recognize the problems of child abuse by parents or other family members. Paragraph (2) of the definition is modified to state "The youth is suffering from serious parental or familial neglect or abuse."

h. "Economically Disadvantages" and "Family Income"

Commentors recommended that "6-month" be changed to "12-month" in describing how total family income is to be computed. Job Corps agrees that actual 12-month income should be used, when available, since it provides a complete and accurate representation of a family's annual income for use in determining economically disadvantaged status. Also, use of

actual 12-month income will avoid the potential for under- or overstating family income in cases of seasonal or part-time employment. However, in those situations where only a six-month income figure is available, it will be acceptable to annualize such income. Therefore, the definition of family income has been changed to permit the use of actual annual income for the 12-month period prior to application or the use of family income for the 6-month period prior to application and annualizing that income.

i. "Family"

Job Corps was requested to clarify in which cases a youth is a member of a family and in which cases the youth is considered to be a "family of one." Job Corps acknowledges the need for this distinction and has divided this definition, with the second portion becoming a definition for "family of one." Secondly, in response to another recommendation, the test of whether an individual receives 50% of support from the family has been deleted because of difficulties in gathering and verifying documentation. In addition, the regulations provide that an individual with handicaps has an option of applying and being considered as a member of a family or as a family of one.

j. "Individual With Handicaps"

A commentor questioned whether an individual with handicaps who needed a full-time attendant could be excluded from entry into the Job Corps program. Job Corps' response is that such an individual could not be automatically excluded. Also, in the proposed rule, regulations regarding individuals with handicaps were inaccurately cited in the definition at § 638.200 and in §§ 638.539(g) and 638.813(a). The correct citations are now included.

k. "Interagency Agreement"

Several commentors asked that Job Corps add these agreements which state the responsibilities of Job Corps and of the Federal agencies operating Job Corps centers. The commentors also asked that reference to this agreement be added to §§ 638.503 and 638.601. The definition and the references in the two sections have been added.

1. "National Training Contractor"

Several commentors requested that the definition be modified to recognize the role of Federal agencies other than the Department of Labor in contracting for services with national training contractors. Job Corps concurs and has

added "(or, in the case of CCCs, a Federal agency at the national level)."

m. "Placement"

One commentor recommended modifying the definition to allow for placement upgrades. Job Corps disagrees. The present language still allows for placement upgrades providing the initial placement occurs within 6 months of termination as is the present policy.

n. "Site Survey"

A commentor noted that site surveys should "among other considerations, take into account structural accessibility for persons with handicaps." Job Corps has added this language to the definition.

o. "Utilization Study"

In response to a request for more precise language, Job Corps has replaced "facility implementation study" with "detailed architectural/engineering report."

2. Section 638.301 *Funding Procedures*

Commentors recommended that this section be rearranged and changed. They requested that Job Corps distinguish funding procedures for contract centers from those that apply to centers operated by federal agencies. Job Corps has agreed with these comments and has rearranged this section. Job Corps also has added the word "contract" before "center" where appropriate to distinguish between the two types of centers.

3. Section 638.400 *Eligibility for Participation*

This was the most commented-on section. Existing regulations restrict participation in Job Corps to youth 16 to 22 years of age. Commentors were concerned that the language in paragraph (a) would immediately expand eligibility to include 14 and 15 year old youth. Job Corps has revised paragraph (a) to state present policy and those circumstances which would alter that policy.

4. Section 638.403 *Selective Service*

A commentor recommended that the section be revised to state clearly that male students who did not comply with Selective Service requirements would not be eligible to enroll or to remain in Job Corps. Job Corps agrees and has modified the introductory paragraph accordingly.

5. Section 638.405 *Extensions of Enrollment*

A commentor asked that the section be modified to state that students enrolled in advanced career training programs may remain in Job Corps beyond the two year limit. Job Corps agrees and, consistent with section 428(d)(1) of JTPA, has added "Students enrolled in advanced career training programs may be enrolled up to one additional year (Section 428(d)(1))."

6. Section 638.409 *Placement and Job Development*

A commentor requested that language contained in paragraphs (a) and (c) of § 638.401 be added here to better state contracting officer responsibilities and the importance of completing placement forms. Job Corps agrees and has added similar language in this section.

7. Section 638.502 *Job Corps Basic Education Program*

A recommendation was made to change the word "develop" in the first sentence. Job Corps does much more than develop curricula; it contracts for curricula with outside resources, encourages center enrichment and supplementation, and continually strives to upgrade current offerings. Therefore, the first sentence has been modified to read, "The Job Corps Director shall prescribe or provide for basic education curricula to be used at centers."

8. Section 638.503 *Vocational Training*

A commentor asked that the words "competency based" be deleted in reference to the individualized training being offered to Job Corps students. Job Corps agrees partially. Such a change would allow for a wider range of offerings in advanced training programs which, while individualized, might not be competency-based. However, the concept of competency-based training remains appropriate for other than individualized training; and the final rule provides for individualized or competency-based vocational training.

9. Section 638.507 *Work Experience*

A recommendation was made that pay arrangements for students in work experience programs be more explicitly stated. Job Corps disagrees with this recommendation and feels that the obligations of both Job Corps and the employer are sufficiently defined.

10. Section 638.512 *Sexual Behavior and Harassment*

A commentor asked that this section be retitled "Sexual behavior and prohibition of harassment." Job Corps disagrees and will keep the present title

and language. Procedures developed by the Job Corps Director will state that sexual harassment is prohibited.

11. Section 638.524 *Allowances and Allotments*

Commentors recommended changes to allow payment of readjustment allowances for: (1) The student who completes vocational training between 91 and 180 days in pay status; and (2) the student who dies, receives a medical termination, or enlists in the Armed Forces between 91 and 180 days in pay status. Job Corps agrees and has made two changes to paragraph (b). The end of the first sentence has been changed from "maximum benefits completor" to "maximum benefits or vocational completor." And, in the second sentence, "in fewer than 90 days" to "in fewer than 180 days."

12. Section 638.526 *Tort and Other Claims*

A commentor recommended that the Regional Office be allowed to pay tort claims that are less than \$1,000 without Regional Solicitor approval. Job Corps disagrees with this recommendation. Regional Solicitor opinions are invaluable and should be obtained regardless of the amount of the claim. Further, present delegation of authority from the Secretary to decide such claims does not allow Job Corps Regional Directors to pay claims without approval.

13. Section 638.531 *Limitation on the Use of Students in Emergency Projects*

Job Corps agrees with commentors who suggested that the rights and safety of students engaged in fire suppression activities are best served by relying on policies and procedures developed by those agencies involved in fire suppression activities, such as the Departments of Agriculture and Interior. Therefore, the reference to the development of special safety procedures for fire suppression has been deleted.

14. Section 638.532 *Annual Leave*

Commentors recommended that Job Corps make changes that would rectify current inequities regarding annual leave accrual based on the number of AWOL days in a single pay period versus a similar number of days spread over the two pay periods. Job Corps agrees that there are inequities that the accrual formula should be modified. To address this problem, the first sentence of paragraph (a) has been replaced with this language:

Except for the initial pay period, students shall accrue annual leave at the rate of one

calendar day for each pay period, provided that the student was not AWOL or on administrative leave without pay during that pay period. For the initial pay period, a student shall accrue one day of annual leave regardless of the date of enrollment provided that the student was not AWOL or on administrative leave without pay from the date of enrollment.

15. Section 638.534 *Legal Services*

Commentors recommended modifications to reflect restrictions on the circumstances under which Job Corps may pay for legal services for students. These restrictions are consistent with the language in section 104 of the Department of Labor Appropriations Act, 1990, Pub. L. 101-166. Job Corps agrees and has modified this section to state these restrictions and procedures.

16. Section 638.539 *Complaints and Disputes*

A commentor asked for a change to paragraph (a) to exempt non-discrimination cases from the stated time limits. Job Corps declines to do so as non-discrimination time limits are contained in the statutes referenced in paragraph (g) of this section.

17. Section 638.541 *Job Corps, Training Opportunities*

A commentor recommended modification to insure better linkages with other JTPA programs. Job Corps agree and has modified this section to allow and encourage closer and better defined linkages for services to disadvantaged youth.

18. Section 638.542 *Child Care Services*

Commentors stated that the proposed rule did not address the issue of child care at Job Corps centers. Job Corps agrees and has added this section. It will read "Center operators may propose and, with the approval of the Job Corps Director, establish child care facilities."

19. Section 638.543 *Community Relations Program*

It was brought to the agency's attention that the requirement for a community relations program was not addressed in the proposed rule. Job Corps agrees. This section will be added and will contain this language: "Each center operator shall establish a community relations program to include establishment of a community relations council which includes student representation. (Section 431)"

20. Section 638.600 *Applied Vocational Skills Training (VST) Work Projects*

Several commentors asked that the VST training that is conducted on conservation projects on federal, state and public lands be included. This is a longstanding Job Corps policy. The necessary language has been inserted as the third sentence in paragraph (b). Another commentor asked that VST training be available not just in "construction trades" but in "construction and related trades." Job Corps agrees and has modified the first sentence in paragraph (b).

D. Other Features of Final Rule

Some other specific features of the final rule are described below.

1. Administrative Provisions

Because the Job Corps utilizes contractors to operate centers and, unlike JTPA Titles I, II, and III programs, does not use grants to Governors (and thus does not provide funds through Governors to JTPA service delivery areas) for this purpose, the majority of the JTPA regulations covering administrative provisions of the Act (e.g., 20 CFR part 636) do not apply to the Job Corps program. Those which do apply are cited below in subpart A of 20 CFR part 638. Other regulations affecting the governing and administration of the Job Corps program are cited elsewhere in part 638.

2. Job Corps Policy and Requirements Handbook

While no major programmatic or policy changes are included in the final rule, the method of implementing Job Corps program requirements and procedures is affected. Section 638.100 provides for the issuance of a Job Corps Policy and Requirements Handbook (Handbook). The Handbook will be incorporated by reference into each contract or agreement to operate a Job Corps center, program, or entity, and will contain policy any requirements necessary for, and appropriate to, the administration and management of the Job Corps program.

Subject areas to be covered by the Handbook include: Outreach and Screening, Placement, Educational Program, Vocational Training, Student Support, Health Services, Residential Living, Administration and Management, Facilities Security and Related Subjects, Financial Management, Procurement, Property Management, Subcontracting for Contract Centers, and Nondiscrimination.

These areas cover all aspects of Job Corps program operations and correspond with language in the final rule alluding to procedures to be established or issued by the Job Corps Director. Such procedures were included in the prior Job Corps regulations at 20 CFR part 684 (1989). The overall effect will be to streamline the regulations and enhance program flexibility.

E. Technical Corrections and Other Clarifying Rules

DOL is taking this opportunity to update and clarify the Job Corps regulations by deleting references to CETA. References to new or revised requirements under JTPA are inserted. Editorial changes are also made (e.g., nomenclature revisions, simplification of language deletion of repetitive references).

1. Taxation

The Job Training Partnership Act Amendments of 1986, Pub. L. 99-496 section 12, 100 Stat. 1261, 1264 (October 16, 1986), amended section 437(c) of the Act relating to taxation of Job Corps operations. The amendment was to ensure that all Job Corps activities and transactions authorized under Title IV-B of the Act which are carried out pursuant to contracts with the Secretary by either for-profit or non-profit Job Corps contractors re exempted from all State gross receipts, excise, sales, use, business privilege, or similar taxes (such as occupational taxes) measured by gross receipts. "Joint Explanatory Statement of Compromise Agreement on S. 2069," 132 Cong. Rec. H8809 (October 1, 1986). The language of section 437(c) of the Act, as amended, therefore is reflected in § 638.812 below.

2. Claims for Losses

A two-year time limit has been added for all claims for losses, damage, and theft. This is consistent with Federal Tort Claims Act procedures, and permits the expeditious handling of claims.

3. Comprehensive Employment and Training Act Regulations; Other Technical Amendments

The Comprehensive Employment and Training Act (CETA) was repealed in 1982. Public Law 97-300 184(a)(1), 96 Stat. 1322, 1357 (October 13, 1982). CETA regulations were maintained, however, for historical and reference purposes. With this publication, DOL removes the CETA regulations from 20 CFR chapter V. The CETA regulations continue to apply to litigation arising under CETA. Other minor technical and clarifying regulations are promulgated as well.

Regulatory Impact

The final rule implements Job Training Partnership Act Title IV-B, makes technical changes, and clarifies existing regulations to reflect continuing policies. It does not have the financial or other impact to make it a major rule and therefore the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291, 3 CFR, 1981 Comp., p. 127, 5 U.S.C. 601 note.

When the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b) that the rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction

The final rule contains no new collection of information requirements. Collection of information requirements contained in the rule are the same as those approved in the prior regulations at 20 CFR part 684 (1989).

However, comments regarding any collection of information required by this rule or otherwise for the Job Corps program can be sent to the Office of Job Corps, Employment and Training Administration, Washington, DC 20210; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Office of Employment and Training Administration, Washington, DC 20503.

Catalog of Federal Domestic Assistance Number

This program is listed in the *Catalog of Federal Domestic Assistance* at Number 17.211, "Job Corps."

List of Subjects

20 CFR Parts 626, 636, 675-680, 685, 688 and 689

Grant programs, Labor, Manpower training programs.

20 CFR Part 638

Contract programs, Labor, Training and employment programs.

20 CFR Part 684

Contract programs, Labor, Training and employment programs.

Final Rule

Accordingly, 20 CFR chapter V is amended as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

1. The authority citation to 20 CFR part 626 continues to read:

Authority: 29 U.S.C. 1579(a).

§ 626.2 [Amended]

1. Section 626.2 is amended by deleting from paragraph (a) the phrase "with the exception of the Job Corps regulations, which are set forth in part 684 of title 20".

§ 626.3 [Amended]

2. The consolidated table of contents in § 626.3 is amended by removing the words "PARTS 637-638—[RESERVED]" and all the text following and inserting in lieu thereof the following:

§ 626.3 Table of contents for the regulations under the Job Training Partnership Act.

* * * * *

PART 637—[RESERVED]

PART 638—JOB CORPS PROGRAM UNDER TITLE IV-B OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—Purpose and Scope

Sec.

638.100 General.

Subpart B—Definitions

638.200 Definitions.

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638.301 Funding procedures.
638.302 Center performance measurement.
638.303 Site selection and facilities management.
638.304 Historical preservation.
638.305 Capital improvements.
638.306 Protection and maintenance of contract center facilities owned or leased by Job Corps.
638.307 Facility surveys.

Subpart D—Enrollment, Transfers, Terminations, and Placements in the Job Corps

638.400 Eligibility for participation.
638.401 Outreach and screening of participants.
638.402 Enrollment by readmission.
638.403 Selective service.
638.404 Transfers.
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638.406 Federal status of students.
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638.409 Placement and job development.

Subpart E—Center Operations

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638.501 Student handbook.
638.502 Job Corps basic education program.
638.503 Vocational training.

638.504 Occupational exploration programs.
638.505 Scheduling of training.
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638.507 Work experience.
638.508 Sale of services or objects.
638.509 Leisure-time employment.
638.510 Health care and services.
638.511 Drug use and abuse.
638.512 Sexual behavior and harassment.
638.513 Death.
638.514 Residential support services.
638.515 Recreation/avocational program.
638.516 Laundry, mail, and telephone service.
638.517 Counseling.
638.518 Intergroup relations program.
638.519 Incentives system.
638.520 Student government and leadership programs.
638.521 Student welfare association.
638.522 Evaluation of student progress.
638.523 Food service.
638.524 Allowances and allotments.
638.525 Clothing.
638.526 Tort and other claims.
638.527 Federal employees' compensation.
638.528 Social Security.
638.529 Income taxes.
638.530 Emergency use of personnel, equipment and facilities.
638.531 Limitation on the use of students in emergency projects.
638.532 Annual leave.
638.533 Other student absences.
638.534 Legal services to students.
638.535 Voting rights.
638.536 Religious rights.
638.537 Disclosure of information.
638.538 Disciplinary procedures and appeals.
638.539 Complaints and disputes.
638.540 Cooperation with agencies and institutions.
638.541 Job Corps training opportunities.
638.542 Child care services.
638.543 Community relations program.

Subpart F—Applied Vocational Skills Training (VST)

638.600 Applied vocational skills training (VST) through work projects.
638.601 Applied VST budgeting.

Subpart G—Experimental, Research, and Demonstration Projects

638.700 Experimental research, and demonstration projects.

Subpart H—Administrative Provisions

638.800 Program management.
638.801 Staff training.
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638.803 Safety.
638.804 Environmental health.
638.805 Security and law enforcement.
638.806 Property management and procurement.
638.807 Imprest and petty cash funds.
638.808 Center financial management and reporting.
638.809 Audit.
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638.811 Review and evaluation.
638.812 State and local taxation of Job Corps deliverers.

638.813 Nondiscrimination; nonsectarian activities.
638.814 Lobbying; political activities; unionization.
638.815 Charging fees.
* * * *

PART 684 [REDESIGNATED AS PART 638]

3. Part 684 is redesignated as part 638 and the redesignated part 638 is revised to read as follows:

Part 638—JOB CORPS PROGRAM UNDER TITLE IV-B OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—Purpose and Scope

Sec.

638.100 General.

Subpart B—Definitions

638.200 Definitions.

Subpart C—Funding, Site Selection, and Facilities Management

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- 638.813 Nondiscrimination; nonsectarian activities.
- 638.814 Lobbying; political activities; unionization.
- 638.815 Charging fees.

Authority: 29 U.S.C. 1579(a).

Subpart A—Purpose and Scope

§ 638.100 General.

(a) *Purpose and Scope.* The purpose of this part is to delineate the policies, rules, and regulations that govern the operation of the Job Corps program, authorized under Title IV-B of the Job Training Partnership Act (Act). Job

Corps is one of the broad range of programs for youth authorized by the Act. Job Corps centers are located in both rural and urban areas and provide training, education, residential and a variety of other support services necessary to prepare students to become more responsible, productive, and employable. (Section 421)

(b) *Job Corps Policy and Requirements Handbook.* The policies and procedures required in this part which are to be established by the Job Corps Director shall be contained in a policy and requirements handbook which shall be incorporated by reference in each contract or agreement to operate a Job Corps center, program, or entity.

(c) *Definitions.* Definitions for terms used in this part are found in section 4 of the Act and in subpart B of this part. Statutory authority for the regulations in this part is found in section 169(a) of the Act (29 U.S.C. 1579(a)). Applicable statutory provisions, including sections of the Act other than section 169(a), are noted parenthetically in this part.

Subpart B—Definitions

§ 638.200 Definitions.

In addition to the definitions contained in section 4 of the Act, the following definitions apply to programs under Title IV-B of the Act and under this part:

"Absent Without Official Leave (AWOL)" means the absence of a student without official leave. For purposes of tort claims, federal employees' compensation, pay status and leave accrual, a residential student is considered AWOL if AWOL for 24 continuous hours. A non-resident student is considered AWOL if AWOL for one full day of center training.

"Act" means the Job Training Partnership Act.

"Allotment" means:

(1) A portion of the readjustment allowance prescribed by this part, which portion is paid monthly during the period of service of a student directly to a spouse of the student, to the child(ren) of the student, or to any other relative of the student who draws substantial support from the student; and

(2) A supplement to the portion allotted by the student, made by the payment of an equal amount by DOL. (Section 429(d))

"Allowance" means a benefit provided by DOL to students by cash, check, credit, voucher, direct provision, or otherwise for such personal travel, leave, quarters, subsistence, transportation, equipment, clothing, recreational services, and other

expenses as the Job Corps Director may deem necessary or appropriate to the students' needs. (Section 429)

"Capital improvement" means any modification, addition, restoration or other improvement:

- (1) Which increases the usefulness, productivity, or serviceable life of an existing site, facility, building, structure, or major item of equipment;
- (2) Which is classified for accounting purposes as a "fixed asset"; and
- (3) The cost of which increases the recorded value of the existing building, site, facility, structure, or major item of equipment and is subject to depreciation.

"Center" means an organizational entity, including all of its subparts, providing Job Corps training and designated as a Job Corps center by the Job Corps Director.

"Center Director" means a center's chief official or the Center Director's designee.

"Center operator" means an agency or contractor that runs a center under an agreement or contract with DOL.

"Center review board" means the group at a center consisting of representatives from staff and students that reviews charges brought against students for infractions of center rules for which the penalty of termination might be imposed.

"Civilian Conservation Center (CCC)" means a center operated on public land under an agreement between DOL and another federal agency, which shall provide, in addition to other training and assistance, programs of work experience to conserve, develop, or manage public natural resources or public recreational areas or to develop community projects in the public interest.

"Contract center" means a center administered under a contract between Job Corps and a corporation, partnership, public agency, or similar legal entity.

"Contracting officer" means a DOL official authorized to enter into contracts or agreements on behalf of DOL.

"Deliverer" means any individual or organization that receives federal funds directly from DOL to establish, operate, or provide service to any Job Corps program or activity.

"Department of Labor (DOL)" means the United States Department of Labor, including its agencies and organizational units.

"Disruptive home life" means a home life characterized by such conditions as:

- (1) The youth is living in an orphanage or other protective institution;

(2) The youth is suffering from serious parental or familial neglect or abuse; or
 (3) The youth's father, mother, or legal guardian is a chronic invalid, alcoholic, narcotics addict, or has any other serious health condition.

"*Economically disadvantaged*" means an individual who:

(1) Receives, or is a member of a family which receives, cash welfare payments under a Federal, State, or local welfare program;

(2) Has, or is a member of a family which has, received a total family income for the twelve-month (or six-month, annualized, if twelve-month data are not available) period prior to application to the program which, in relation to family size, was not in excess of the higher of:

(i) The poverty level determined in accordance with criteria established by the Department of Health and Human Services; or

(ii) 70 percent of the lower living standard income level;

(3) Is receiving food stamps pursuant to the Food Stamp Act of 1977;

(4) Is a foster child on behalf of whom State or local government payments are made; or

(5) Is an individual with handicaps whose own income meets the requirements of paragraphs (1) or (2) of this definition, but who may be a member of a family whose income does not meet such requirements.

"*Employment and Training Administration (ETA)*" means the agency within DOL which includes the Job Corps.

"*Enrollee*" means a student.

"*Enrollment*" means:

(1) For resident students, the period of time from the date the student leaves home to begin government-authorized travel to the assigned center to the date of the scheduled arrival at the official travel destination authorized by the Center Director upon termination from Job Corps; and

(2) For nonresident students, the period of time from the time the student arrives at any center activity or program until he or she physically leaves such activity or program.

"*Environmental health program*" means the center program of health, safety, and prevention of environmental hazards for staff and students.

"*Facility survey*" means a review of center facilities conducted by professional architects and/or engineers to establish the condition of a facility and determine repairs, alterations, or replacement, if any, necessary to meet health and safety, building code or programmatic requirements.

"*Family*" means one or more persons living in a single residence who are related by blood, marriage, or adoption. A step-child or step-parent is considered to be related by marriage.

"*Family of One*" means a person who lives alone, or who lives with unrelated individuals, or who lives in a single residence where no family member claims that person as a dependent. An individual with handicaps has an option of applying and being considered as a member of a family or as a family of one.

"*Family income*" means all income actually received from all sources by all members of the family for the twelve-month (or six-month, annualized, if twelve-month data are not available) period prior to application. Family size is the maximum number of family members during the twelve-month period prior to application. When computing family income, income of a spouse and other family members is counted for the portion of the twelve-month (or six-month, annualized, if twelve-month data are not available) period prior to application that the person was actually a member of the family.

(1) For the purpose of determining an individual's eligibility for participation in the Job Corps program, family income includes:

(i) Gross wages, including wages from community service employment (CSE), work experience, and on-the-job training (OJT) paid from Job Training Partnership Act funds, and salaries (before deductions);

(ii) Net self-employment income (gross receipts minus operating expenses); and

(iii) Other money income received from sources such as interest, net rents, OASI (Old Age and Survivors Insurance) social security benefits, pensions, alimony, and periodic income from insurance policy annuities, and other sources of income.

(2) Family income does not include:

(i) Non-cash income such as food stamps or compensation received in the form of food or housing;

(ii) Imputed value of owner-occupied property, i.e., rental value;

(iii) Public assistance payments;

(iv) Cash payments received pursuant to a State plan approved under titles I, IV, X, or XVI of the Social Security Act, or disability insurance payments received under Title II of the Social Security Act;

(v) Federal, State, or local unemployment benefits;

(vi) Capital gains and losses;

(vii) One-time unearned income, such as, but not limited to:

(A) Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans;

(B) One-time or fixed-term scholarship or fellowship grants;

(C) Accident, health, and casualty insurance proceeds;

(D) Disability and death payments including fixed-term (but not lifetime) life insurance annuities and death benefits;

(E) One-time awards and gifts;

(F) Inheritance, including fixed-term annuities;

(G) Fixed-term workers' compensation awards;

(H) Soil bank payments; and

(I) Agricultural crop stabilization payments;

(viii) Pay or allowances which were previously received by any veteran while serving on active duty in the Armed Forces;

(ix) Educational assistance and compensation payments to veterans and other eligible persons under chapters 11, 13, 31, 34, 35, and 36 of Title 38, U.S. Code;

(x) Payments made under the Trade Act of 1974;

(xi) Payments received under the Black Lung Benefits Act (30 U.S.C. 901 *et seq.*);

(xii) Any income directly or indirectly derived from, or arising out of, any property held by the United States in trust for any Indian tribe, band, or group or any individual; per capita payments; and services, compensation or funds provided by the United States in accordance with, or generated by, the exercise of any right guaranteed or protected by treaty; and any property distributed or income derived therefrom, or any amounts paid to or for the legatees or next of kin of any member, derived from or arising out of the settlement of an Indian claim; and

(xiii) Child support payments.

"*Finance center*" means the agency or contractor which handles the payment of student allowances, allotments, and transportation charges.

"*Imprest fund*" means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small purchases. Imprest funds occur only at CCCs. (For contract centers, see definition of "petty cash fund".)

"*Individual with handicaps*" means any person within the definition at 29 CFR part 32 or 33, or 41 CFR part 60-741,

as applicable. Although the definition employs the plural form "handicaps", individuals with a single impairment are covered within the definition. See §§ 638.539(g) and 638.811(a) of this part.

"Interagency Agreement" means that formal agreement between DOL and another Federal agency administering and operating centers. This agreement establishes procedures for the funding, administration, operation, and review of those centers as well as the resolution of any disputes.

"Job Corps" means the agency of the Department of Labor established by section 422 of the Job Training Partnership Act (JTPA) (29 U.S.C. 1692) to perform those functions of the Secretary of Labor set forth in Title IV-B of JTPA (29 U.S.C. 1691 *et seq.*).

"Job Corps Director" means the chief official of the Job Corps or the Job Corps Director's designee.

"Leisure-time employment" means part-time paid employment of students.

"Lower living standard income level" means the income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary based on the most recent "lower living family budget" issued by the Secretary.

"Maximum benefits" means the apportioning of various segments of Job Corps training so that individual needs of each student are met and the student achieves as much benefit from the Job Corps as his or her abilities allow.

"National office" means the national office of Job Corps.

"National training contractor" means a labor union, union-affiliated organization, business organization, or a combination thereof, having contracts with the national office (or in the case of CCCs, a Federal agency at the national level) to provide vocational training, placement, or other services under a single contract including multi-area operations.

"Occupational exploration program" means the center program whereby a student is made aware of the vocational training opportunities made available by the center in order for the student to make an informed vocational selection.

"Operational support services" means activities or services required for the operation of Job Corps, such as outreach and screening services, contracted vocational training and off-center educational training, placement services, certain health services, and miscellaneous logistical services.

"Petty cash fund" means a cash fund of a fixed amount from a contract center finance or disbursing officer to a contract center's duly appointed cashier, for disbursement as needed from time to

time in making payment in cash for relatively small purchases. Petty cash funds occur at contract centers. (For CCCs, see definition of "imprest fund".)

"Placement" means student employment, entry into the Armed Forces, or enrollment in other training or education programs, within six months following termination from Job Corps (or such other period as may be announced by the Job Corps Director by notice in the Federal Register).

"Placement agency" means an organization acting pursuant to a contract with Job Corps that provides placement services to students.

"Poverty level" means the annual income level at or below which families are considered to live in poverty, as annually determined by the Department of Health and Human Services.

"Readjustment allowance" means the money accumulated by and reserved for each student on a monthly basis during tenure in Job Corps that is paid in a lump sum after termination.

"Readmission" means re-enrollment of a student who has previously been enrolled in Job Corps for less than 24 months and applies for reenrollment to the basic program and can be expected to complete a program within the remaining portion of the youth's 24-month enrollment period.

"Regional appeal board" means the board designated by the Regional Director in a regional office that considers student appeals of disciplinary discharges.

"Regional Director" means the chief official of a regional office or the Regional Director's designee.

"Regional office" means a regional office of Job Corps.

"Regional Solicitor" means the chief official of a regional office of the DOL Office of the Solicitor or the Regional Solicitor's designee.

"Screening agency" means an organization acting pursuant to a contract with the Job Corps that performs outreach, screens, and enrolls youth into Job Corps.

"Secretary" means the Secretary of Labor (the chief official of DOL) or the Secretary's designee.

"Site survey" means a survey of a potential location for a center that includes a preliminary engineering evaluation of the condition and capacity of existing buildings, pavements, utility systems, installed equipment, and all other real property components as well as a preliminary cost estimate for acquisition of facilities, necessary rehabilitation, modification, and new construction required that would, among other considerations, take into account

structural accessibility for persons with handicaps.

"State" means one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau/Trust Territory.

"Student" means an individual who is enrolled in Job Corps.

"Student handbook" means the document developed by the center operator and given to each student during orientation that outlines center services, rules, and regulations and student rights and responsibilities. See § 638.501 of this part.

"Termination" means the act of officially ending a student's enrollment in Job Corps for any reason.

"Transfer" means the reassignment of a student from one center to another.

"Unauthorized goods" means firearms and ammunition; explosives and incendiaries; knives with blades longer than 2" (two inches); homemade weapons; all other weapons and instruments used primarily to inflict personal injury; stolen property; drugs, including alcohol, marijuana, depressants, stimulants, hallucinogens, tranquilizers, and drug paraphernalia except for drugs and/or paraphernalia that are prescribed for medical reasons; and any other goods prohibited by the center operator in the student handbook.

"Utilization study" means an architectural/engineering report which is developed subsequent to a site survey or assessment after the regional and national offices have agreed, on the basis of the site survey, that the site is potentially favorable for a center. After the utilization study is approved by the Job Corps Director it becomes the basis for scope of work, budget, design, rehabilitation, and construction of facilities for the center.

"Vocational skills training (VST)" means activities that provide vocational instruction to students through actual construction or improvement of permanent facilities or other approved projects.

"Work experience program" means a program for assignment of a student to an actual job situation, either on-center or off-center, for the purpose of enhancing a student's employability. Work experience requiring the student to work over 25 hours per week is subject to the provisions of the Fair Labor Standards Act and State and local minimum wage laws for hours worked in excess of 25 hours per week.

Subpart C—Funding, Site Selection, and Facilities Management

§ 638.300 Eligibility for funds and eligible deliverers.

(a) Funds shall be made available by the Secretary to eligible deliverers for the operation of centers and for the provision of Job Corps operational support services.

(b) Eligible deliverers for the operation of centers and for the operational support services necessary to center operation shall be units of Federal, State, and local government, State and local public agencies, private-for-profit and nonprofit organizations, Indian tribes and organizations, and labor unions, union-affiliated, and union/management organizations.

§ 638.301 Funding procedures.

(a) Contracting officers shall request proposals for the operation of all contract centers and for provision of operational support services, pursuant to the Federal Acquisition Regulation (48 CFR chapter 1) and the DOL Acquisition Regulation (48 CFR chapter 29) for work to be done under contract. The requests for proposal for each contract center and for each operational support service contract shall describe specifications and standards unique to the operation of the center and for the provision of operational support services.

(b) Job Corps contract center operators shall be selected and funded on the basis of proposals received, according to criteria established by the Job Corps Director. Such criteria shall be listed in the request for proposals.

(c) The contracting officer shall negotiate with eligible deliverers for operational support services on the basis of the criteria developed for each specific service to be rendered. Such criteria shall be listed in the request for proposals.

(d) The Secretary may enter into interagency agreements with eligible deliverers that are Federal agencies for the funding, establishment, and operation of CCCs. Such interagency agreements shall ensure compliance by such Federal agencies with the regulations under this part.

(e) Job Corps payments to Federal agencies that operate CCCs shall be made by a transfer of obligational authority from DOL to the respective operating agency on a quarterly basis.

(f) The Secretary is authorized to expend funds made available for Job Corps for the purpose of printing, binding, and disseminating data and other information related to Job Corps to public agencies, private organizations,

and the general public. (Section 438(3)(A))

(g) Notwithstanding the limitations of Titles II, III, and IV of the Act, funds made available under those titles and transferred to the Job Corps program pursuant to § 638.541 of this part may be used for the Job Corps program in accordance with the provisions of this part. (Sections 427(b) and 439)

(h) (1) In accordance with this section and procedures established by the Job Corps Director, the contracting officers shall enter into contracts with public or private (including nonprofit) entities for the provision of outreach and screening services, which shall be performed in accordance with § 638.402 of this part and procedures established by the Job Corps Director. (Sections 424 and 425)

(2) In accordance with this section and procedures established by the Job Corps Director, the contracting officers shall enter into contracts with public or private (including nonprofit) entities for the provision of placement services, which shall be performed in accordance with § 638.409 of this part and procedures established by the Job Corps Director.

(i) All agreements and contracts pursuant to this section shall be made pursuant to the Federal Property and Administrative Services Act of 1949, as amended; the Federal Grant and Cooperative Agreement Act of 1977; and the Federal Acquisition Regulation (48 CFR chapter 1) and the DOL Acquisition Regulation (48 CFR chapter 29).

§ 638.302 Center performance measurement.

The Job Corps Director shall establish a national performance measurement system for centers, which shall include annual performance goals.

§ 638.303 Site selection and facilities management.

(a) The Job Corps Director shall approve the location and size of all centers.

(b) Contract centers shall be established, relocated or expanded in accordance with procedures established by the Job Corps Director.

(c) For federally-operated centers, either the Job Corps Director or a Federal agency may propose a site on public lands and if discussions between them establish the advisability of such, the Job Corps Director may require that the agency submit a site survey and utilization study. If the Job Corps Director decides to establish a center, facilities engineering and real estate management will be conducted by the Job Corps Director or by the Federal

agency pursuant to an interagency agreement and this part.

§ 638.304 Historical preservation.

The Job Corps Director shall review the "National Register of Historic Places," issued by the National Park Service, to identify sites, buildings, structures, and objects of archeological, architectural, or historic significance which could be destroyed or adversely affected by any proposed project or site selection. Procedures for review are included in the "National Register of Historic Places" at 36 CFR part 800.

§ 638.305 Capital improvements.

Capital improvement projects and new construction on Job Corps Centers shall be requested and performed in accordance with procedures established by the Job Corps Director.

§ 638.306 Protection and maintenance of contract center facilities owned or leased by Job Corps.

The Job Corps Director shall establish procedures for the protection and maintenance of contract center facilities owned or leased by Job Corps which shall be consistent with Federal Property Management Regulations at 41 CFR chapter 101.

§ 638.307 Facility surveys.

The Job Corps Director shall issue procedures to conduct periodic facility surveys of centers.

Subpart D—Enrollment, Transfers, Terminations, and Placements in the Job Corps

§ 638.400 Eligibility for participation.

To participate in the Job Corps, a young man or woman must be an eligible youth who:

(a) Is at least 16 and not yet 22 years of age at the time of enrollment, except in the case of an otherwise eligible individual with handicaps, for whom there is no upper age limit, provided, however, that youths 14 to 15 years of age may be eligible for enrollment upon a specific determination by the Job Corps Director to enroll them;

(b) Is a United States citizen, United States national, a lawfully admitted permanent resident alien, a lawfully admitted refugee or parolee, or other alien who has been permitted to accept permanent employment in the United States by the Attorney General or the Immigration and Naturalization Service;

(c) Requires additional education, training, or intensive counseling and related assistance in order to secure and hold meaningful employment, participate successfully in regular school

work, qualify for other suitable training programs, satisfy Armed Forces entry requirements, or qualify for a job where prior skill or training is a prerequisite;

(d) Is economically disadvantaged;

(e) Has sufficient ability to benefit from the program;

(f) Demonstrates an interest in obtaining the maximum benefit from the program, as evidenced by a voluntary desire to enroll and the youth's signature on the application form;

(g) Has a signed consent for enrollment from a responsible parent or guardian if the applicant is unemancipated and under the age of majority (unless the parent or guardian cannot be located), pursuant to applicable laws on age of majority and emancipation of minors;

(h) Has established suitable arrangements for the care of any dependent children for the proposed period of enrollment;

(i) Is not on probation, parole, or under a suspended sentence, or under the supervision of any agency as a result of court action or institutionalization, unless the court or other appropriate agency certifies in writing that release from the supervision of the agency is satisfactory to the agency and does not violate applicable laws and regulations;

(j) To qualify for residential training, is currently living in an environment so characterized by cultural deprivations, a disruptive homelife, or other disorienting conditions as to substantially impair prospects for successful participation in a nonresidential program providing appropriate training, education, or assistance;

(k) Is physically and emotionally able to participate in normal Job Corps duties without costly or extensive medical treatment;

(1) Is free of any behavioral problem that would potentially prevent other enrollees from receiving the benefit of the program, or impede satisfactory relationships between the center to which the enrollee is assigned and surrounding communities; and

(m) Has a background, characteristics, and physical and mental capabilities which provide reasonable expectations of employment after training.

§ 638.401 Outreach and screening of participants.

In accordance with procedures issued by the Job Corps Director:

(a) The Regional Director, as contracting officer, shall contract with screening agencies, which shall perform Job Corps outreach and screening functions.

(b) Screening agencies shall develop outreach and referral sources, actively

seek out potential applicants, conduct personal interviews with all applicants, and determine who are interested and likely Job Corps participants. See also § 638.541 of this part.

(c) Screening agencies shall complete all Job Corps application forms.

(1) Except as provided in paragraph (c)(2) of this section, screening agencies shall determine whether applicants meet the eligibility criteria in § 638.400 of this part for participation in the Job Corps.

(2) The Job Corps Director may provide that determinations with respect to one or more of the eligibility criteria set forth in § 638.400 of this part shall be made by the Regional Director on the basis of information and recommendations supplied by the screening agency.

(3) An applicant for participation in the Job Corps who has been determined ineligible may appeal that determination pursuant to § 638.539 of this part. (Sections 423, 424, 425, and 144(a))

§ 638.402 Enrollment by readmission.

Procedures for screening and selection of applicants for readmission shall be issued by the Job Corps Director.

§ 638.403 Selective service.

The Job Corps Director shall develop procedures to ensure that as a condition of enrollment and continued enrollment:

(a) Each male applicant 18 years of age or older has evidence that he has complied with section 3 of the Military Selective Service Act (50 U.S.C. App. 453), by presenting and submitting to registration if required pursuant to such section; and

(b) When a male student turns 18 years of age after enrollment, he submits to the center operator evidence that he has complied with section 3 of the Military Selective Service Act (50 U.S.C. App. 453), by presenting and submitting to registration if required pursuant to such section. (Section 504)

§ 638.404 Transfers.

Transfer of a student from one center of assignment to another center shall be made only in accordance with procedures issued by the Job Corps Director.

§ 638.405 Extensions of enrollment.

The center operator shall see that the total length of enrollment of a student does not exceed two years (Section 426(a)) except that an extension of enrollment may be authorized in accordance with procedures issued by the Job Corps Director. Students enrolled in advanced career training programs may be enrolled up to one additional year. (Section 428(d)(1))

§ 638.406 Federal status of students.

Students shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those relating to hours of work, rates of employment, leave, unemployment compensation, and Federal employee benefits, except as provided by 5 U.S.C. 8143(a) (Federal employees' compensation) and by §§ 638.526 and 638.527 of this part. (Section 436(a))

§ 638.407 Terminations.

The Job Corps Director shall issue procedures for the termination of students.

§ 638.408 Transportation.

The transportation of students to and from centers shall occur in accordance with procedures issued by the Job Corps Director.

§ 638.409 Placement and job development.

The overall objective of all Job Corps activities shall be to enhance each student's employability and to effect the successful placement of each student. Placement efforts shall concentrate on jobs related to a student's vocational training, on military service when this is the student's choice, or on acceptance and placement in other educational and/or training programs. The placement of students shall be performed in accordance with procedures issued by the Job Corps Director.

(a) The Regional Director, as contracting officer, shall contract with placement agencies, which shall perform placement functions.

(b) Placement agencies shall complete all Job Corps placement forms.

Subpart E—Center Operations

§ 638.500 Orientation program.

The center operator shall design and implement a reception and orientation program in accordance with procedures issued by the Job Corps Director.

§ 638.501 Student handbook.

Each center operator shall develop a student handbook which provides essential information to students for distribution to all students in accordance with procedures issued by the Job Corps Director.

§ 638.502 Job Corps basic education program.

The Job Corps Director shall prescribe or provide for basic education curricula to be used at centers. Students are considered to be in-school youths. The

Job Corps Director, in coordination with regional offices, shall review and approve the basic education program at each center. Center operators shall provide the following educational programs at a minimum:

- (a) Reading and language skills;
- (b) Mathematics;
- (c) A program to prepare eligible students for the American Council on Education Tests of General Educational Development (GED);
- (d) World of work;
- (e) Health education;
- (f) Driver education; and
- (g) English as a second language (ESL) programs for selected center operators (regional offices shall arrange for the assignment of selected applicants needing ESL programs to the centers where such programs are available).

§ 638.503 Vocational training.

(a) Each center shall provide enrollees with competency-based or individualized training in an area which will best contribute to the student's opportunities for permanent long-term employment. Specific vocational training programs offered at individual centers will be subject to the approval of the Job Corps Director in accordance with policies issued by the Job Corps Director.

(b) The Job Corps Director may determine that it is appropriate to contract for vocational training programs at specific centers with national business, union, or union-affiliated organizations in order to facilitate entry of students into the workforce. All agreements with these national training contractors will be contracted at the national level in accordance with policies issued by the Job Corps Director; the Federal Acquisition Regulation (48 CFR chapter 1); the DOL Acquisition Regulation (48 CFR chapter 29); and, if CCCs, interagency agreements.

§ 638.504 Occupational exploration program.

An occupational exploration program shall be provided by all centers in accordance with procedures issued by the Job Corps Director.

§ 638.505 Scheduling of training.

The amount of time for each student's education and vocational training shall be apportioned to the individual needs of each student pursuant to procedures developed by the Job Corps Director.

§ 638.506 Purchase of vocational supplies and equipment.

The Job Corps Director shall develop procedures for the low-cost sale to students of vocational tools, clothing,

and other equipment that are prerequisites to employment.

§ 638.507 Work experience.

(a) The center operator shall emphasize and implement programs of work experience for students through center program activities or through arrangement with employers. Work experience shall be under actual working conditions and should enhance the employability, responsibility, and confidence of the students.

(b) The following limitations shall be observed in establishing work experience programs:

(1) Students shall only be assigned to work meeting the safety standards of § 638.803 of this part.

(2) Any work experience arranged for employment not covered by a Federal, State, or local minimum wage law shall have prior regional office approval.

(3) When work experience with pay is arranged, the student, for applicable wage provisions of the Davis-Bacon Act, the Fair Labor Standards Act, the Service Contract Act, and other applicable minimum wage laws, shall be considered a joint employee of the Job Corps and the work experience employer.

(i) The wages paid by Job Corps (including the reasonable cost to Job Corps of room, board, and other facilities, as well as clothing and living allowances) shall be no less than the federal minimum wage rate set forth in section 6(a)(1) of the Fair Labor Standards Act (FLSA) for up to 25 hours a week. The work experience employer shall pay the student, in cash, any wages above the FLSA minimum whenever such additional amounts are required by the Davis-Bacon Act, the Service Contract Act, the State or local minimum wage law, or other applicable minimum wage law. For any time in excess of 25 hours per week, the work experience employer shall pay the student, in cash, no less than the entire wage at the wage rate required by applicable law.

(ii) In addition to the cash wages required to be paid by work experience employers by paragraph (b)(3)(i) of this section, work experience employers, after the first six weeks of work by a student, shall also pay additional cash wages to the student at an hourly rate of 25 percent of the wage set forth in section 6(a)(1) of the Fair Labor Standards Act.

§ 638.508 Sale of services or objects.

The services rendered or objects produced at the center may be sold at cost to students or center employees, but shall not be sold in the community

unless such services or products do not displace workers in the local community or result in the sale of products which compete with local merchants.

§ 638.509 Leisure-time employment.

A center operator may authorize gainful leisure time employment of students as long as such employment does not interfere with required scheduled activities.

§ 638.510 Health care and services.

The center operator shall provide a health program, including basic medical, dental, and mental health services, for all students from admission until termination from the Job Corps. The program shall be developed in accordance with procedures issued by the Job Corps Director.

§ 638.511 Drug use and abuse.

The Job Corps Director shall develop procedures to ensure that each center operator offers students counseling and education programs related to drug and alcohol use and abuse.

§ 638.512 Sexual behavior and harassment.

The Job Corps Director shall develop procedures to ensure that center operators establish rules concerning sexual behavior and harassment. See also §§ 638.539(g) and 638.813(a) of this part.

§ 638.513 Death.

In each case of student death, the center operator shall follow procedures established by the Job Corps Director, including notification of next of kin and for disposition of remains. See also § 638.524(d) of this part.

§ 638.514 Residential support services.

The center operator shall provide for residential support services structured as an integral part of the overall training program. This service shall include a secure, attractive physical and social environment, seven days a week, 24 hours a day, designed to enhance learning and personal development. All students, including nonresidents while they are on-center, shall be provided with the full program of applicable services in accordance with procedures issued by the Job Corps Director.

§ 638.515 Recreation/avocational program.

The center operator shall develop a recreation/avocational program in accordance with procedures issued by the Job Corps Director.

§ 638.516 Laundry, mail, and telephone service.

(a) The center operator shall provide adequate laundry services and supplies at no cost to students. Students shall be encouraged to launder, iron, and repair their personal clothing.

(b) The center operator shall establish a system for prompt delivery of mail received by students in a manner that protects the confidentiality of such mail, and shall arrange for a sufficient number of conveniently located pay telephones for student use.

§ 638.517 Counseling.

The center operator shall establish and conduct an ongoing structured counseling program in accordance with procedures issued by the Job Corps Director.

§ 638.518 Intergroup relations program.

The center operator shall conduct a structured intergroup relations program designed to reduce prejudice, prevent discriminatory behavior by staff and students, and increase understanding among racial/ethnic groups and between men and women. The program shall be developed in accordance with procedures issued by the Job Corps Director.

§ 638.519 Incentives system.

The center operator shall establish and maintain its own incentives system for students in accordance with procedures established by the Job Corps Director.

§ 638.520 Student government and leadership programs.

The center operator shall establish an elected student government and student leadership program in accordance with procedures established by the Job Corps Director.

§ 638.521 Student welfare association.

The center operator shall develop a plan for the organization and operation of a student welfare association, to be run by an elected student government for the benefit of all students and with the help of a center staff advisor. This plan shall be developed in accordance with procedures issued by the Job Corps Director.

(a) Student welfare association revenues may be derived from such sources as snack bars, vending machines, disciplinary fines, etc.

(b) Student welfare association activities shall be funded from student welfare association revenues.

§ 638.522 Evaluation of student progress.

The center operator shall implement a system to evaluate the progress of each

student in receiving the maximum benefit from the program. The system shall be developed in accordance with procedures issued by the Job Corps Director.

§ 638.523 Food service.

(a) The center operator shall ensure that meals for students are nutritionally well-balanced, of good quality, and sufficient in quantity, in accordance with procedures issued by the Job Corps Director. Food shall be prepared and served in a sanitary manner.

(b) Non-students shall be charged for food provided for them unless prior regional office approval has been obtained. Such charges shall be sufficient to cover the cost of the food and its preparation.

§ 638.524 Allowances and allotments.

(a) The Secretary shall periodically establish rates of allowances and allotments to be paid students pursuant to section 429 (a), (c), and (d) of the Act, and the Job Corps Director shall publish these rates as a notice in the *Federal Register*.

(b) The Job Corps Director shall ensure that each student receives a readjustment allowance for each 30 days of satisfactory participation in Job Corps after termination from the program if he/she has remained in Job Corps for at least 180 days in pay status or if he/she terminates after 90 days in pay status as a maximum benefits or vocational completer. In the event that a student receives a medical termination or enlists in the Armed Forces in fewer than 180 days after enrollment, he/she shall be eligible for the accrued readjustment allowance. See also paragraph (d) of this section. (Section 429(c))

(c) The Job Corps Director shall establish procedures to allow students to authorize a deduction(s) from their monthly readjustment allowance, which shall be matched by an equal amount from Job Corps funds and sent as an allotment(s) by the Finance Center to the student's spouse or dependent child(ren) if such spouse or dependent child(ren) resides in any State in the United States.

(d) In the event of a student's death, any amount due, including the amount of any unpaid readjustment allowance, shall be paid in accordance with provisions of 5 U.S.C. 5582 (designation of beneficiary; order of precedence). (Section 429(c))

§ 638.525 Clothing.

The Job Corps Director shall establish procedures to provide clothing for all

students by means of a clothing purchase allowance and by center issue.

§ 638.526 Tort and other claims.

(a) Students shall be considered federal employees for purposes of the Tort Claims Act (28 U.S.C. 2671 *et seq.*). (Section 436(a)(3)). In the event a student is alleged to be involved in the damage, loss, or destruction of the property of others, or of causing personal injury to or the death of other individual(s), claims may be filed with the Center Director by the owner(s) of the property, the injured person(s), or by a duly authorized agent or legal representative of the claimant. The Center Director shall collect all of the facts, including accident and medical reports and the names and addresses of witnesses, and submit the claim for a decision to the DOL Regional Solicitor's Office. All tort claims for \$25,000 or more shall be sent to the Associate Solicitor for Employee Benefits, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

(b) Whenever there is loss or damage to persons or property, which is believed to have resulted from operation of a Job Corps center and to be a proper charge against the Federal Government, a claim for such damage may be submitted by the owner(s) of the property, the injured person(s), or by a duly authorized agent or legal representative of the claimant to the Regional Solicitor, who shall determine if the claim is cognizable under the Tort Claims Act. Claims shall be filed no later than two years from the date of such loss or damage. If it is determined not to be cognizable, the Regional Solicitor shall consider the facts and may settle the claim pursuant to section 436(b) of the Act in an amount not to exceed \$1,500.

(c) The Job Corps may pay claims to students for lost, damaged, or stolen property, up to a maximum set by the Job Corps Director when such loss is not due to the negligence of the student. Students shall file claims no later than two years from the date of such loss. Students shall be compensated for losses when they are the result of a natural disaster or when the student's property is in the protective custody of the Job Corps, which shall be the case when the student is AWOL. The Job Corps Director shall provide for claims to be filed with regional offices for a determination on the claim. The regional office shall promptly notify the student and the center of its determination.

§ 638.527 Federal employees' compensation.

(a) Students shall be considered federal employees for purposes of Federal employees' compensation (FEC). (Section 436(a)(2))

(b) Resident students shall be considered to be in the "performance of duty" as Federal employees from the date they leave their homes and begin authorized travel to their center of assignment until the date of their scheduled arrival at the official travel destination upon the termination from Job Corps. During this period the youths shall be known as students, and this period shall constitute their period of enrollment. During this period, resident students shall be considered as in performance of duty at all times, during any and all of their activities, 24 hours a day, seven days a week, except as described in paragraph (d) of this section.

(c) Non-resident students shall be considered to be "in performance of duty" as Federal employees from the time they arrive at any scheduled center activity or program until they physically leave such activity or program.

(d) No student shall be considered as being in performance of duty status if he/she is absent without official leave (AWOL) or after arrival home on administrative leave without allowances.

(e) In computing compensation benefits for disability or death, the monthly pay of a student shall be deemed that received under the entrance salary for a grade GS-2 Federal employee, and 5 U.S.C. 8113 (a) and (b) shall apply to students.

(f) Compensation for disability shall not begin to accrue until the day following the date on which the injured student completes his or her Job Corps termination.

(g) Whenever a student is injured, develops an occupationally related illness, or dies while in the performance of duty, the Job Corps Director shall ensure that procedures set forth in the DOL Employment Standards Administration regulations at 20 CFR chapter I are followed. The Job Corps Director shall ensure that a thorough investigation of the circumstances and a medical evaluation are completed and that required forms are filed with the DOL Office of Workers' Compensation Programs.

§ 638.528 Social Security.

The Act provides that students are covered by title II of the Social Security Act (42 U.S.C. 401 *et seq.*) and shall pay applicable employment taxes (e.g., the Federal Insurance Contributions Act

(FICA) tax) on their living and readjustment allowances. (Section 436(a)(1))

§ 638.529 Income taxes.

The Act provides that students are Federal employees for the purposes of the Internal Revenue Code of 1986 (title 26, U.S. Code). The Job Corps Director may obtain from tax authorities information regarding taxation of student income and provide this to center operators and to the finance center.

§ 638.530 Emergency use of personnel, equipment and facilities.

The Job Corps Director may provide emergency assistance when there is a threat of natural disaster. Students may be asked to volunteer their services to help in such cases. The center operator shall arrange that any expenses consequent to such assistance shall be borne, to the extent possible, by the benefiting organization.

§ 638.531 Limitation on the use of students in emergency projects.

The Job Corps Director shall develop procedures, when necessary, to safeguard the rights and safety of students who volunteer to be used in emergency situations.

§ 638.532 Annual leave.

The Job Corps Director shall issue procedures to administer the accrual and use of student leave. Such procedures shall provide that:

(a) Except for the initial pay period, students shall accrue annual leave at the rate of one calendar day for each pay period provided that the student was not AWOL or on administrative leave without pay during that pay period. For the initial pay period, a student shall accrue one day of annual leave regardless of the date of enrollment provided that the student was not AWOL or on administrative leave without pay from the date of enrollment. Accrual time shall begin on the day the student departs for a center and end on the date of his or her scheduled arrival home or at a place of employment.

(b) Annual leave shall continue to accrue during periods of home, emergency, and administrative leave with pay and shall be suspended only when the student is AWOL or on administrative leave without allowances.

(c) Students shall not be paid at termination for unused accrued leave.

(d) Students may use accrued annual leave at any time subject to approval by the Center Director. Annual leave with transportation at government expense

shall be allowed only after the student has spent 180 days in pay status in Job Corps, and only once per year of enrollment.

(e) Students shall not be charged annual leave for travel time to and from home and center by the most direct route. Saturdays, Sundays, and holidays that are officially recognized at the center shall not be charged as annual leave.

§ 638.533 Other student absences.

The Job Corps Director shall develop procedures for authorized student absences and to account for all absences whether authorized or unauthorized.

§ 638.534 Legal services to students.

(a) The Job Corps Director shall develop procedures to afford students effective and competent legal representation in criminal and certain civil cases. This shall include assisting students in obtaining free or low cost legal assistance or obtaining local attorneys or public defenders to represent students, and paying for such legal services (provided that attorney fees in criminal cases shall not be paid by Job Corps except in accordance with paragraph (b) of this section), in accordance with guidelines issued by the Job Corps Director.

(b) Job Corps shall not pay the expenses of legal counsel or representation in any criminal case or proceeding for a student, unless the Center Director has certified to the Regional Director, and the Regional Director has approved, that a public defender is not available. With such approval of the Regional Director, Job Corps may compensate attorneys obtained pursuant to paragraph (a) of this section in criminal cases for reasonable expenses. Compensation shall be at the rates no higher than those set forth in the Criminal Justice Act of 1964, as amended (18 U.S.C. 3006A(d)).

§ 638.535 Voting rights.

The Job Corps Director shall develop procedures to enable eligible students and staff to vote either locally or by absentee ballot. See also § 638.814 (a) through (c) of this part.

§ 638.536 Religious rights.

The right to worship or not worship as he/she chooses shall not be denied to any student. Religious services may not be held on-center unless the center is so isolated as to make transportation to and from community religious facilities impractical. If religious services are held on-center, no federal funds shall be paid to those who conduct such services.

Services shall not be confined to one religious denomination. The center operator shall instruct students that students are not obligated by Job Corps to attend such services. See also §§ 638.539(g) and 638.813 of this part.

§ 638.537 Disclosure of information.

(a) *Requests for information.* The Job Corps Director shall develop administrative procedures to respond to requests for information or records pertaining to students and such other disclosures as may be necessary.

(b) *Freedom of Information Act—(1) Disclosure.* Disclosure of Job Corps information shall be in accordance with the Freedom of Information Act and shall be handled according to DOL regulations at 29 CFR part 70.

(2) *Contractors.* Job Corps contractors are not "agencies" for Freedom of Information Act purposes. Therefore, their records are not subject to disclosure under the Freedom of Information Act or 29 CFR part 70.

(c) *Privacy Act of 1974.* When DOL maintains a system of records covered by the Privacy Act of 1974, or provides by contract for a contractor, such as a screening agency or a contract center operator, to operate by or on behalf of the Job Corps such a system of records to accomplish a Job Corps function, the requirements of the DOL regulations at 29 CFR part 70a apply to such system or records.

§ 638.538 Disciplinary procedures and appeals.

(a) The center operator shall establish reasonable rules and regulations for student behavior, in accordance with procedures developed by the Job Corps Director. Such rules shall be established to ensure high standards of behavior and conduct.

(b) The center operator shall develop reasonable sanctions for breaking established rules, in accordance with procedures developed by the Job Corps Director.

(c) The center operator shall ensure that all students have the opportunity for due process in disciplinary proceedings, in accordance with procedures developed by the Job Corps Director. Such center procedures, at a minimum, shall include center review boards where the penalty of termination might be imposed, and procedures for appealing, to a regional appeal board designated by the Regional Director, center decisions to terminate a student. See § 638.407 of this part. The decision of the regional appeal board shall be final agency action.

§ 638.539 Complaints and disputes.

(a) *Center and other deliverer grievance procedures.* Each center operator or other Job Corps deliverer shall establish and maintain a grievance procedure for complaints about its programs and activities from students and other interested parties. A hearing on each complaint shall be conducted, using the established grievance procedure, within 30 days of filing of the complaint and a decision on the complaint shall be made by the Center Director or with the knowledge of the Center Director not later than 60 days after the filing of the complaint. Except for a complaint alleging fraud or criminal activity, complaints shall be made within one year of the alleged occurrence. (Section 144(a))

(b) *Federal review of student grievances.* Where a student or a person denied enrollment has exhausted the center or other deliverer grievance procedure established pursuant to paragraph (a) of this section, the student may appeal the decision to the regional appeal board. The regional appeal board shall review the appeal and determine within 120 days after receiving the appeal whether to reverse, affirm, or remand the decision. The decision of the regional appeal board shall be final agency action. (Section 144(c))

(c) *Federal review of non-student grievances.* (1) Where the grievance or complaint is made by an interested party other than a student, should the deliverer fail to provide a decision as required in paragraph (a) of this section, the complainant may then request from the Regional Director a determination whether reasonable cause exists to believe that the Act or this part has been violated. The request shall be filed no later than 10 days from the date on which the complainant should have received a decision pursuant to paragraph (a) of this section, and shall describe with specificity the facts and the proceedings (if any) below.

(2) The Regional Director shall act within 90 days of receipt of the request and where there is reasonable cause to believe the Act or this part has been violated shall direct the deliverer to issue a decision adjudicating the dispute pursuant to the deliverer's grievance procedures. The Regional Director's action is not final agency action on the merits of the dispute and therefore is not appealable under the Act. See sections 144(c) and 166(a) of the Act. If the deliverer does not comply with the Regional Director's order within 60 days, the Regional Director may impose a sanction on the deliverer for failing to issue a decision.

(d) *Failures to comply with the Act.* Where DOL has reason to believe that the center operator or other deliverer is failing to comply with the requirements of the Act, the Regional Director shall investigate the allegation or belief and determine within 120 days after receiving the complaint whether such allegation or complaint is true. As the result of such a determination, the Regional Director may:

(1) Direct the deliverer to handle a complaint through the grievance procedures established under paragraph (a) of this section; or

(2) Investigate and determine whether the deliverer is in compliance with the Act and this part. If the Regional Director determines that the deliverer is not in compliance with the Act or this part, the appropriate sanctions set forth in section 164 of the Act shall be applied, subject to paragraph (e) or (f) of this section, as appropriate. (Section 163 (b) and (c))

(e) *Contract disputes.* A dispute between DOL and a Job Corps contractor shall be handled only pursuant to the Contract Disputes Act and 41 CFR part 29-60.

(f) *Inter-agency disputes.* A dispute between DOL and a federal agency operating a center shall be handled only pursuant to the interagency agreement with that agency for the operation of the center.

(g) *Nondiscrimination.* Nondiscrimination requirements, procedures, complaint processing, and compliance reviews are governed by, as applicable, provisions of the following Department of Labor regulations:

(1) 29 CFR parts 31 and 32 for programs receiving federal financial assistance (Section 167);

(2) 29 CFR part 33 for programs conducted by the Department of Labor; and

(3) 41 CFR chapter 60 for entities that have a federal "government contract" as that term is defined in the applicable regulations.

See also § 638.813(a) of this part, regarding discrimination.

§ 638.540 Cooperation with agencies and institutions.

The Job Corps Director shall develop guidelines for the national office's, the regional offices', and for deliverers' maintenance of cooperative relationships with other agencies and institutions, including law enforcement, educational institutions, communities, and other employment and training agencies.

§ 638.541 Job Corps training opportunities.

The Job Corps Director shall develop policies and requirements which will ensure linkages, where feasible, with other Federal, State and local programs to enhance the provision of services to disadvantaged youth. These shall include, where appropriate: Referrals of enrollees; participant assessment; services accompanying pre-employment and work maturity skills training, work experience, job search skills training, basic skills training, and occupational skills training authorized under the Job Training Partnership Act for youth programs; and services supporting participants in the Job Opportunities and Basic Skills Training Program (JOBS) (Section 427(b)). Such services may be provided sequentially or concurrently.

§ 638.542 Child care services.

Center operators may propose and, with the approval of the Job Corps Director, establish child care facilities.

§ 638.543 Community relations program.

Each center operator shall establish a community relations program, which shall include establishment of a community relations council which includes student representation. (Section 431)

Subpart F—Applied Vocational Skills Training (VST)**§ 638.600 Applied vocational skills training (VST) through work projects.**

(a)(1) The Job Corps Director shall establish procedures for administering applied vocational skills training (VST) projects; such procedures shall include funding and reporting requirements, criteria to be used for granting approvals, and reviewing requirements.

(2) Each applied VST project shall be submitted to the Regional Director for approval. The annual applied VST plan described in paragraph (c) of this section shall be submitted to the Regional Director for approval.

(b) Applied VST may be provided in an actual working setting for training students in the construction and related trades. This shall involve authorized construction or other projects that result in finished facilities or products. This shall include conservation projects on Federal, State, and public lands, and projects performed for other organizations in accordance with policies established by the Job Corps Director. Centers may also perform applied VST public service projects for nearby communities and capital

improvements for other Job Corps centers.

(c) Applied VST shall be the major vehicle for the training of students in the construction and related trades. In each year, each center operator shall develop an annual applied VST plan for the coming year. In order to ensure that maximum training opportunities are available to students, the center vocational instructor (and/or the national training contractor, when applicable) shall participate in the planning and shall approve each project which involves his/her particular trade. Applied VST projects shall be planned in such a manner as to give priority to on-center rehabilitation and construction needs. The Job Corps Director shall establish annual funding levels to support applied VST programs and shall establish specific policies on limitation, documentation, and reporting requirements relating to applied VST programs.

§ 638.601 Applied VST budgeting.

The Job Corps Director shall establish procedures to ensure that center operators maintain applied VST project funds as a separate center budget line item and maintain strict accountability for the use or nonuse of such funds. The approval of the Job Corps national office is necessary to transfer applied VST project funds to any other center budget category or program activity. In the case of civilian conservation centers, the use of VST project funds shall be governed by the interagency agreements.

Subpart G—Experimental, Research, and Demonstration Projects**§ 638.700 Experimental, research, and demonstration projects.**

(a) The Job Corps Director, at his or her discretion, may undertake experimental, research, or demonstration projects for the purpose of promoting greater efficiency and effectiveness in the Job Corps program in accordance with section 433 of the Act.

(b) The Job Corps Director may arrange for projects under this section to be undertaken jointly with other Federal or federally assisted programs.

(c) The Secretary may waive any provision of this part that the Secretary finds would prevent the implementation of experimental, research, or demonstration project elements essential to a determination of their feasibility and usefulness.

Subpart H—Administrative Provisions**§ 638.800 Program management.**

(a) The Job Corps Director shall establish and use internal program management procedures sufficient to prevent fraud or program abuse. The Job Corps Director shall ensure that sufficient auditable and otherwise adequate records are maintained to support the expenditure of all funds under the Act.

(b) The Job Corps Director shall provide guidelines for center staffing levels and qualifications. The guidelines shall adhere to standard levels of professional education and experience which are accepted generally within the fields of education and counseling.

§ 638.801 Staff training.

The Job Corps Director shall establish guidelines for necessary training for national office, regional office, and deliverer staff.

§ 638.802 Student records management.

The Job Corps Director shall develop guidelines for a system of maintaining records for each student during enrollment and for the disposition of such records after termination.

§ 638.803 Safety.

(a) The Job Corps Director shall establish procedures to ensure that students are not required or permitted to work, to be trained, to reside, or to receive services in buildings or surroundings or under conditions that are unsanitary, hazardous, or lack proper ventilation. Whenever students are employed or trained for jobs, they shall be assigned to such jobs or training in accordance with appropriate health and safety practices.

(b) The Job Corps Director shall develop a procedure to provide appropriate protective clothing for students in work or training.

(c) The Job Corps Director shall develop procedures to ensure compliance with applicable DOL Occupational Safety and Health Administration regulations.

§ 638.804 Environmental health.

The Job Corps Director shall provide guidelines for proper environmental health conditions.

§ 638.805 Security and law enforcement.

(a) The Job Corps Director shall provide guidelines to protect the security of students, staff, and property on-center on a 24-hours-a-day, 7-days-a-week basis.

(b)(1) All property which would otherwise be under exclusive federal

legislative jurisdiction shall be considered under concurrent jurisdiction with the appropriate State and locality with respect to criminal law enforcement as long as a center is operated on such property. This extends to portions of the property (e.g., housing and recreational facilities) in addition to the portions of the property used as the center or training facility.

(2) The Job Corps Director shall ensure that centers on property under concurrent federal-State jurisdiction establish agreements with federal, State and local law enforcement agencies to enforce criminal laws on such property. (Section 435(d))

(c) The Job Corps Director shall develop procedures to ensure that any searches of a student's personal area or belongings for unauthorized goods follow applicable right-to-privacy laws.

§ 638.806 Property management and procurement.

The Job Corps Director shall develop procedures to establish and maintain a system for acquisition, protection, preservation, maintenance, and disposition of Job Corps real and personal property, and services so as to maximize its usefulness and to minimize operating, repair, and replacement costs.

§ 638.807 Imprest and petty cash funds.

Federally operated centers shall establish auditable imprest funds. Contract centers shall establish auditable petty cash funds. The Job Corps Director shall develop procedures to ensure the security of and accountability for imprest and petty cash funds.

§ 638.808 Center financial management and reporting.

The Job Corps Director shall establish procedures to ensure that each center operator and each subcontractor maintain a financial management system that will provide accurate, complete, and current disclosures of the financial results of Job Corps operations, and will provide sufficient data for effective evaluation of program activities. Fiscal accounts shall be maintained in a manner that ensures timely and accurate reporting as required by the Job Corps Director.

§ 638.809 Audit.

(a) The Secretary of Labor, the DOL Office of Inspector General, the Comptroller General of the United States, and any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Job Corps deliverers and

their subcontractors that are pertinent to the Job Corps program for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) The Secretary shall, with reasonable frequency, survey, audit, or examine, or arrange for the survey, audit, or examination of Job Corps deliverers, or their subcontractors using Federal auditors or independent public accountants. Such surveys, audits, or examinations normally shall be conducted annually but not less than once every two years.

§ 638.810 Reporting requirements.

The Job Corps Director shall establish procedures to ensure timely and complete reporting of such program information as is necessary to maintain accountability for the Job Corps program and funding.

§ 638.811 Review and evaluation.

The Job Corps Director shall establish adequate program management to provide continuous examination of the performance of the components of the program.

§ 638.812 State and local taxation of Job Corps deliverers.

The Act provides that transactions conducted by a private for-profit deliverer or a nonprofit deliverer in connection with the deliverer's operation of a center or other Job Corps program or activity shall not be considered as generating gross receipts. Such deliverer shall not be liable, directly or indirectly, to any State or subdivision thereof (nor to any person acting on behalf thereof) for any gross receipts taxes, business privilege taxes measured by gross receipts, or any similar taxes imposed on, or measured by, gross receipts in connection with any payments made to or by such deliverer for operating a center or other Job Corps program, or activity. Such deliverer shall not be liable to any State or subdivision thereof to collect or pay any sales, excise, use, or similar tax imposed upon the sale to or use by such deliverer of any property, service, or other item in connection with the operation of a center or other Job Corps program or activity. (Section 437(c))

§ 638.813 Nondiscrimination; nonsectarian activities.

(a) *Nondiscrimination.* Center operators and other deliverers, and subcontractors and/or subrecipients of center operators and other deliverers shall comply with the nondiscrimination provisions of section 167 of the Act and its implementing regulations, and with,

as applicable, 29 CFR parts 31 and 32, part 33, and 41 CFR chapter 60. For the purposes of section 167 of the Act, students shall be considered as the ultimate beneficiaries of Federal financial assistance. (Section 167)

(b) *Nonsectarian activities.* Students shall not be employed or trained on the construction, operation, or maintenance of so much of any facility as is used or to be used for sectarian instruction or as a place for religious worship. (Section 167(a)(3))

§ 638.814 Lobbying; political activities; unionization.

No funds provided under the Act may be used in any way:

(a) To attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress;

(b) To attempt to influence in any manner a member of a State or local legislature to favor or oppose any legislation or appropriation by such legislature;

(c) For any activity which involves political activities; or

(d) For any activity which will assist, promote, or deter union organizing. (Sections 141(1) and 143(c)(1))

§ 638.815 Charging fees.

No person or organization shall charge an individual a fee for the placement or referral of such individual in or to a training program under the Act. (Section 141(j))

PART 636—COMPLAINTS, INVESTIGATIONS AND HEARINGS [AMENDED]

4. In part 636, the authority citation is revised to read as follows:

Authority: 29 U.S.C. 1579(a).

§ 636.1 [Amended]

5. Section 636.1 is amended by removing from the first sentence in paragraph (a) the term "Title IV" and inserting in lieu thereof the phrase "Title IV (except part B)".

PARTS 675, 676, 677, 678, 679, 680, 684, 685, 688, AND 689 [REMOVED]

6. Parts 675, 676, 677, 678, 679, 680, 684, 685, 688, and 689 are removed from 20 CFR chapter V.

Signed at Washington, DC, this 29th day of March, 1990.

Elizabeth Dole,
Secretary of Labor.

[FR Doc. 90-7737 Filed 4-5-90; 8:45 am]

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Registered Federal Tax

Friday
April 6, 1990

Part III

Department of the Treasury

Office of the Comptroller of the
Currency

12 CFR Part 19

Rules of Practice and Procedure; Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 19

[Docket No. 90-6]

Rules of Practice and Procedure

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency ("Office" or "OCC") is amending 12 CFR Part 19—Rules of Practice and Procedure—which governs the conduct of administrative proceedings before the Office. The changes include a reorganization of the part and the addition of new and revised provisions. Provisions that are added or revised significantly relate to the following: *Ex parte* communications, motions, good faith certifications, interlocutory review, limited participation in a proceeding by a nonparty, prehearing exchange of information by parties, stipulations, discovery, authority of the presiding officer during a hearing, judicial notice and admissibility of copies and proffers, public hearings, proposed findings of fact and conclusions of law, submissions by limited participants, initial decision of the presiding officer, review of the initial decision, and informal hearings for persons suspended or removed on the basis of a criminal indictment or conviction. In addition, the scope of the part is expanded to include sanctions against parties and their counsel and disciplinary rules to govern persons practicing before the Office. These disciplinary rules will apply to persons who represent others in matters before the agency and include attorneys and accountants. Additional changes clarify ambiguities and revise procedures to address more appropriately issues that arise in the hearing process. As a whole, the proposed revisions are intended to improve the Office's hearing process and to make its rules of practice more easily understood.

EFFECTIVE DATE: May 7, 1990.

FOR FURTHER INFORMATION CONTACT: Brenda Curry, Assistant Director, Legislative and Regulatory Analysis Division, Telephone (202) 447-1632; or Daniel P. Stipano, Assistant Director, Enforcement and Compliance Division, Telephone (202) 447-1818, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: This rule revises 12 CFR Part 19—Rules of Practice and Procedure ("part 19")—which governs the Office's formal and informal administrative proceedings. The rule in its final form has two major components: (1) A reorganization of the rules and (2) a revision of some of the current provisions and the addition of new ones.

I. Reorganization of Part 19

Pursuant to section 916 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183, 486-87 (1989), the Federal banking agencies will be issuing uniform rules and procedures within the next 18 months. In the interim period, the OCC is issuing a new version of part 19 to enhance the conduct of OCC administrative proceedings. The OCC expects that its experience with the new part 19 will provide useful guidance to it and the other banking agencies as they assemble uniform rules and procedures that best enhance the efficiency of the administrative process.

Part 19 has been reorganized into a format that will make it easier to use and understand. The reorganization is needed because (i) certain new provisions are conceptually unrelated to former subparts and (ii) certain former subparts can be divided into more logical groupings of provisions to form new subparts that are easier to use.

The former part 19 was organized into eight subparts, A through H. In its new form, part 19 is reorganized into 15 subparts, A through O. A chart has been included at the end of the preamble that correlates each section of the final rule with the former sections of part 19. Each subpart is summarized below.

Subpart A—General Provisions. This subpart contains provisions which apply to most hearings and formal investigations. Included are a new, more detailed section covering the scope of part 19 and an amended section containing definitions of terms used in part 19. In addition, subpart A includes amended sections relating to appearance and practice before the OCC, and the Comptroller's retained authority. Subpart A also includes rules governing *ex parte* communications with respect to formal administrative proceedings subject to part 19.

Subpart B—Institution of Adjudicatory Proceedings; Pleadings; Motions; Interlocutory Review. This subpart contains revised requirements relating to the initiation of administrative proceedings, pleadings and motions. It also contains revised procedures for interlocutory review by

the Comptroller of certain rulings by the presiding officer.

Subpart C—Parties and Limited Participation by Nonparties. This subpart contains a new provision that addresses limited participation in a proceeding as a nonparty. The provision provides a procedure for a person who is not a party to a proceeding to petition the presiding officer or the Comptroller to participate in a limited capacity.

Subpart D—Prehearing Procedures; Prehearing Conferences; Discovery. This subpart contains new provisions regarding prehearing exchange of information, including discovery and stipulations. It also contains revised provisions governing subpoenas and prehearing conferences.

Subpart E—Formal Hearings. This subpart contains certain rules and procedures to be followed in all formal hearings conducted under part 19. It is intended to be read together with other subparts—H, I, J, and L—that contain rules and procedures relating to specific kinds of hearings.

Subpart F—Post Hearing Procedures; Initial Decision. This subpart contains a new provision regarding submissions by limited participants in formal hearings. It also contains revised provisions concerning the effect of the presiding officer's initial decision. That decision will become the final decision, unless a party appeals the decision or the Comptroller initiates a review or stays the effective date of the initial decision.

Subpart G—Review by the Comptroller; Final Decision. This subpart contains a new provision concerning review of the presiding officer's initial decision. To secure the Comptroller's review, one of the parties must file a notice of appeal and exceptions to the presiding officer's initial decision. The exceptions, and briefs in support thereof, must present the pertinent arguments regarding those conclusions of the presiding officer to which the party takes exception.

Subpart H—Cease-and-Desist Proceedings. This subpart is similar to the former subpart B and contains provisions governing cease-and-desist proceedings. The former § 19.20 regarding temporary cease-and-desist orders is deleted because such orders do not require a proceeding to be conducted pursuant to part 19. There are no other substantive changes in cease-and-desist proceedings. Some technical amendments are made to subpart H.

Subpart I—Assessment of Civil Money Penalty. This subpart is the same as the former subpart C and contains provisions governing the assessment of civil money penalties. There are no

substantive changes in the civil money penalty proceeding. Some technical amendments are made to subpart I.

Subpart J—Removals, Suspensions and Prohibitions Generally. This subpart is similar to the former subpart D and contains provisions governing removals, suspensions and prohibitions. The former § 19.28 regarding suspension or prohibition by notice has been deleted because such orders do not require a proceeding to be conducted pursuant to part 19. Amendments are made to subpart J regarding removals and prohibitions in the event of consent to conform the regulation to the language of 12 U.S.C. 1818(e)(4). In addition, some technical changes are made to subpart J.

Subpart K—Removals, Suspensions and Prohibitions When a Crime is Charged or a Conviction is Obtained. This subpart is similar to the former subpart E, which governed informal hearing procedures for removals, suspensions and prohibitions when a crime is charged or a conviction is obtained. Those procedures are revised extensively to provide more specific guidance concerning the conduct of informal hearings authorized by 12 U.S.C. 1818(g)(3).

Subpart L—Disciplinary Proceedings Involving the Federal Securities Laws. This subpart corresponds to the former subpart F, which governed disciplinary proceedings involving municipal securities dealers. The provisions of subpart L are expanded to cover disciplinary proceedings involving government securities brokers and dealers or any person associated with government securities brokers or dealers, and transfer agents, for which the OCC acts as the appropriate regulatory agency under the Securities Exchange Act of 1934 ("Exchange Act").

Subpart M—Exemption Hearings Under section 12(h) of the Securities Exchange Act of 1934. This subpart is the same as the former subpart G and contains provisions governing informal exemption hearings held pursuant to section 12(h) of the Exchange Act. Although no substantive change in the content of this subpart is being made, subpart M is clarified to provide that informal hearings under this subpart are presumed to be public.

Subpart N—Formal Investigations. This subpart is the same as the former subpart H, which governed formal investigations. The subpart clarifies that § 19.3(b) of subpart A, dealing with conflicts of interest in representation, applies to formal investigations.

Subpart O—Parties and Representational Practice Before the OCC: Standards of Conduct. This

subpart is new and authorizes sanctions on parties and their counsel for failure to comply with the requirements of part 19. In addition, the subpart contains sections regarding disciplinary rules governing the censure, suspension and debarment of individuals who practice before the Office in a representational capacity. These sections relate to (i) censure, (ii) suspension and debarment, (iii) incompetence, (iv) disreputable conduct, (v) the initiation of disciplinary proceedings, and (vi) proceedings under subpart O.

II. Comments and Discussion

The Office last reviewed and made major revisions to part 19 in April 1979. Since that time, the Office's experience with the application of these rules of practice and procedure has shown that, in some instances, the former part 19 did not address adequately the issues and situations that arise in administrative proceedings. Some provisions of part 19 needed clarification. In addition, some issues were not addressed at all. This final rule eliminates ambiguities and establishes new rules and procedures to improve the Office's administrative hearing process.

The OCC received four comment letters in response to its May 26, 1989, proposed rule. Notice of Proposed Rule Making, 54 FR 22759 (May 26, 1989). Overall, the comments favored the proposed revision. The comments focused on (1) subpart C—Parties and Limited Participation by Nonparties; (2) subpart D—Prehearing Procedures; Prehearing Conferences; Discovery; (3) subpart E—Formal Hearings; (4) subpart F—Post Hearing Procedures; Initial Decisions; and (5) subpart O—Parties and Representational Practice Before the OCC: Standards of Conduct. The comments generally suggested ways in which the OCC's proposed rule could be improved. No two commenters addressed the same provision(s) of the proposed rule.

A. Specific Comments

(1) **Subpart C—Parties and Limited Participation by Nonparties.** One commenter suggested that § 19.21, which allows limited participation by nonparties, could cause administrative proceedings to become unmanageable because limited participants might raise issues only marginally relevant to the proceeding. The same commenter suggested that the OCC adopt a provision authorizing the presiding officer in a public hearing to adopt reasonable measures to protect the integrity and reputations of nonparties to the proceeding by closing portions of

hearings and admitting testimony and documents under seal.

The OCC understands the concern that permitting nonparties to participate on a limited basis in a hearing could make administrative proceedings difficult to manage. Section 19.21, however, provides significant protections against this possibility. Nonparties wishing to participate in an administrative proceeding must file a motion with the presiding officer setting forth the grounds on which the application is based, the nature and extent of the applicant's interest in the proceeding, the issues in which the applicant is interested in participating, and the nature of the proposed participation. The presiding officer may grant or deny the motion and may permit oral or written participation to the extent and upon terms that he or she deems necessary. The OCC believes that, as drafted, § 19.21 establishes standards which protect the administrative process from frivolous or dilatory applications by nonparties. As a result, the OCC adopts § 19.21 as proposed.

With respect to protecting nonparties at a public hearing, § 19.43(g) grants to the presiding officer the authority to examine documents to be introduced as well as proposed testimony and to determine which sessions will be held, and what materials will be presented, in private. The OCC believes that this section sufficiently provides the protections sought by the commenter.

(2) **Subpart D—Prehearing Procedures; Prehearing Conferences; Discovery.** (A) One commenter proposed that the prehearing procedures in § 19.31 should be modified to provide for the exchange of proposed exhibits, rather than merely a list of proposed exhibits. The commenter suggested that it is easier to formulate objections to the admissibility of exhibits and to deal with objections from opposing counsel and questions from the presiding officer if the parties each have the actual documents in their possession.

Section 19.31 already contains this procedure. Section 19.31(b) requires each party to file with the presiding officer a written list of exhibits to be offered into evidence at the hearing, together with a copy of each exhibit. This prehearing procedure reasonably permits access to copies of any proposed exhibit in advance of the hearing. Therefore, we adopt § 19.31 as proposed.

(B) One commenter criticized the OCC's proposed discovery provision at § 19.33 as overly broad. As proposed, § 19.33 permits the presiding officer to

allow any type of discovery upon a sufficient showing of relevance, materiality, and need. The commenter stated that the OCC should consider limiting discovery to documents only, and permitting depositions only to preserve testimony when a material witness is unavailable.

The same commenter suggested that the OCC impose a deadline by which all discovery must be completed in the absence of compelling circumstances warranting an extension. Such a deadline would avoid burdening a party with discovery requests up to the date of the hearing.

The OCC carefully considered these comments and has decided to retain the discovery provision as originally proposed. Section 19.33 allows the use of all forms of discovery, including depositions. While the OCC acknowledges that an expanded discovery rule could hamper the efficiency of the administrative process, § 19.33 contains safeguards to ensure the efficiency and fairness of the hearing. The OCC shall rely on the presiding officer to ensure that discovery requests are granted only upon the requisite showing of relevance, materiality, and need. If properly applied, § 19.33 should provide parties and the presiding officer with needed flexibility in the administrative process. Therefore, we adopt § 19.33 without change.

The OCC agrees that discovery requests should not be permitted immediately before a hearing. Therefore, in its final rule, the OCC is adding § 19.33(d), which provides that discovery requests will be permitted only up to 15 days before the scheduled hearing. Thereafter, the presiding officer may grant an exception to this general rule only for good cause shown.

(3) *Subpart E—Formal Hearings.* (A) Section 19.42, which addresses judicial notice and the admissibility of copies and proffers, was supported by one commenter. Section 19.42(c), as drafted in the proposed rule, would permit examination reports to be admissible with or without sponsoring witnesses. The commenter suggested that, absent compelling circumstances, this proposal should be expanded to cover all proposed exhibits. According to the commenter, this change would eliminate the need for document-by-document introduction at the hearing and a separate ruling from the presiding officer on the admissibility of each proposed exhibit.

The OCC adopts this suggestion in § 19.42(c) and will allow this broader policy of admissibility for all exhibits. The goal of an administrative

proceeding is to develop a complete and comprehensive record for the presiding officer. While a broad admissibility policy could create the risk of unfair prejudice in a trial proceeding, that is not the case in an administrative hearing, where the presiding officer is able to admit a wider range of evidence and assign appropriate weight to the various forms of evidence admitted. Allowing exhibits to be admitted without witnesses will enhance the efficiency of the administrative process since the presiding officer would not have to rule on the admissibility of each individual exhibit.

(B) One commenter urged the OCC to include a procedure for summary disposition of cases when the facts are not in dispute. The commenter suggested that, in this situation, a lengthy proceeding to determine the facts is not necessary. Filing of briefs and oral argument should suffice. This provision would streamline and shorten the adjudicatory proceeding.

The OCC has included § 19.45 in subpart E, which will allow for summary disposition of an administrative proceeding. The OCC intends to limit use of summary disposition to situations, prior to the date of hearing, when both parties agree that no genuine issues of material fact exist. The motion for summary disposition would constitute a stipulation to the facts. If the motion is granted by the presiding officer, no hearing will be held. The presiding officer shall reach conclusions of law and draft an initial decision and order.

(4) *Subpart F—Post Hearing Procedures; Initial Decision.* One commenter suggested that use of the term "recommended decision" in § 19.52 and elsewhere be changed to "initial decision", in keeping with the definition contained in the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*

The OCC agrees that the term "initial decision" is a better characterization of the decision issued by a presiding officer in the OCC's administrative process, and has therefore adopted the use of that term.

(5) *Subpart O—Parties and Representational Practice Before the OCC: Standards of Conduct.* (A) One commenter expressed concern about § 19.147(b), which would permit the Comptroller, upon receipt of information regarding an individual's qualification to practice before the OCC, to censure that individual after giving him or her notice and opportunity to respond. The commenter stated that a formal disciplinary proceeding should be used in situations where an individual faces censure, due to the possible significant

adverse effect on an individual's career or practice. The commenter also recommended that such proceedings should not be made public, unless an individual in fact is censured.

Section 19.147(b) allows the Comptroller to censure an individual without a formal proceeding. However, the individual is allowed an opportunity to present his or her views prior to the Comptroller's determination on the matter. Such an informal censure proceeding would address matters that the Comptroller believes are not of a type or nature to warrant a formal disciplinary proceeding. A letter of reprimand is an example of a remedy that the Comptroller could use in this situation. In situations in which the Comptroller initiates a formal disciplinary proceeding, an adjudicative hearing will be provided, pursuant to § 19.147(c). Final orders issued in connection with such a hearing would be made public pursuant to § 913 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183, 483-84 (1989). In view of these procedures, the OCC has decided that § 19.147(b) will not be amended to provide an automatic formal disciplinary proceeding to an individual facing censure.

(B) One commenter requested clarification of whether the proposed § 19.147(c) provided a formal hearing whenever the Comptroller initiated a formal disciplinary proceeding.

The OCC has amended § 19.147(c) to clarify that, in cases where the comptroller initiates a formal disciplinary proceeding, the respondent shall be provided with a hearing, pursuant to § 19.149.

(C) One commenter suggested that the definitions of "person" in § 19.1 and "attorney" and "accountant" in § 19.143 be amended to clarify that the suspension and debarment provisions apply only to individuals, and not to firms.

The OCC intends that the censure, suspension and debarment provisions apply solely to individuals, and not to corporations or partnerships. Section 19.143 has been amended to reflect this intent.

(D) One commenter urged revision of §§ 19.143 and 19.144 to exclude "public accountants" from eligibility to practice before the OCC. The commenter suggests that certified public accountants have demonstrated their qualifications by meeting educational requirements and passing the uniform CPA examinations, while only some states license public accountants to perform audits and other services.

The OCC declines to exclude public accountants from the right to represent clients before the Office. We believe that licensed public accountants are competent to perform audits and provide other services. Therefore, the OCC shall not narrow the definition of "accountant" to exclude public accountants.

B. Additional Modifications to the Rule

Upon our own review, the OCC also has decided to clarify, amend, or add the following provisions to the rule:

(1) *Definition of institution-affiliated party.* The OCC has added a definition of the term "institution-affiliated party" to conform part 19 to the amendments made in the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(2) *Filing and service.* The OCC implied in proposed § 19.11(c) that service would be deemed to occur on the date that the document being served was received by a party. This provision would shorten the amount of time available to a party to prepare documents for the proceeding. In the case of service by first-class, registered, or certified mail, a party reasonably would have to put the document in the mail a minimum of three days before the expiration period to ensure timely service.

The OCC is amending § 19.11(c) to state that service by first-class, registered and certified mail is deemed to occur when a document has been postmarked. In the case of service by express or overnight delivery service, service shall be deemed to have been made upon delivery of such document to an express or overnight delivery service. Section 19.5(a) is amended to provide that if a period of time runs from the date of service, and service has been made by first-class, registered, or certified mail, three days shall be added to the prescribed period from the date when the document to be served is postmarked. In the case of service by express or overnight delivery service, one day shall be added to the prescribed period.

(3) *Subpart E—Formal Hearings.* The OCC amends § 19.42(a), "Judicial notice; admissibility of copies and proffers", to state clearly that the Federal Rules of Evidence are not applicable as a standard for determining admissibility of evidence in an administrative proceeding.

As originally drafted, the proposed rule was ambiguous regarding the applicability of the Federal Rules of Evidence to proceedings brought under subpart E. In the final rule, the OCC has clarified that the Federal Rules of

Evidence are not to be used as a standard for determining admissibility of evidence in an OCC administrative proceeding. The Office emphasizes that evidence which meets the standard for admissibility under the Federal Rules of Evidence is admissible in a proceeding under subpart E. However, the Federal Rules of Evidence do not apply to such proceedings. Situations may exist under which evidence that does not meet the standard for admissibility under the Federal Rules is nonetheless relevant, material, reliable and not unduly repetitive, and therefore is admissible in an administrative proceeding.

(4) *Subpart G—Review by the Comptroller; Final Decision.* The OCC has modified § 19.60(b) which, in the proposed rule, required parties to perfect their appeal of the initial decision by filing a brief containing the party's exceptions to the presiding officer's findings of fact and conclusions of law.

Section 19.60(b) now provides for the filing of exceptions which state specifically those portions of the presiding officer's decision with which a party takes issue. A supplementary brief elaborating on the rationale of the exceptions shall also be filed by the party. If a party relies on an argument or arguments set out in earlier briefs, a cross-reference to the appropriate document or documents will suffice. This amendment eliminates any undue burden on the parties and helps to limit the appeals process solely to expressing dissent from the presiding officer's findings of fact and conclusions of law.

C. Technical Amendments

This rule includes various amendments to correct minor procedural deficiencies that currently exist in the OCC's administrative process. To correct these problems, which can impede the efficient operation and consistency of the administrative process, the OCC is amending provisions dealing with the scope of the part (§ 19.0), stipulations for extensions of time (§ 19.5), filing of documents with the Hearing Clerk (§ 19.11), motions (§ 19.13), review of the initial decision (§ 19.60), the stay of proceeding or final order (§ 19.65), the scope of assessment of civil money penalties (§ 19.80), suspension or removal (§ 19.101), provisions for informal hearings (§ 19.102), the scope of disciplinary proceedings involving the Federal securities laws (§ 19.110), disciplinary orders (§ 19.112), newspaper notice (§ 19.122), informal hearings under § 12(h) of the Securities Exchange Act of 1934 (§ 19.123), and decisions of the Comptroller in exemption hearings

under § 12(h) of the Securities Exchange Act of 1934 (§ 19.124). In addition, technical amendments to §§ 19.71, 19.82, and 19.91 clarify that when a party does not appear at a hearing, the presiding officer, without further proceedings or review of the facts, shall issue an order that is in accordance with the notice issued by the OCC.

Various sections of 12 CFR part 5 will be amended to reflect the changes made to 12 CFR part 19. Specifically, § 5.50(g), which implements provisions of the Change in Bank Control Act, will be revised.

The revised part 19 is applicable to any proceeding that is commenced by the issuance of a notice after the effective date of this final rule. The former version of part 19 shall apply to any proceeding commenced prior to the effective date of the final rule unless, with the consent of the presiding officer, the parties agree to have the proceeding governed by revised part 19.

III. Cross Reference Chart

Set forth below is the new format of part 19 which cross-references the former sections with the new sections.

	Old section No.	New section No.
Subpart A—General Provisions		
Scope of part	19.1	19.0
Definitions	19.0	19.1
Retained authority	19.17	19.2
Appearance and practice before the OCC	19.3	19.3
Ex parte communications		19.4
Time limits	19.6	19.5
Subpart B—Institution of Adjudicatory Proceedings; Pleadings; Motions; Interlocutory Review		
Commencement of proceedings; notice and answer	19.2	19.10
Filing and service	19.4	19.11
Form and signature of papers	19.5	19.12
Good faith certification		19.13
Motions	19.7	19.14
Interlocutory review	19.7(d)	19.15
Subpart C—Parties and Limited Participation by Nonparties		
Parties		19.20
Limited participation by nonparties		19.21
Comptroller's review of ruling on limited participation		19.22
Subpart D—Prehearing Procedures; Prehearing Conferences; Discovery		
Prehearing conferences; procedural matters	19.10(b)	19.30

	Old section No.	New section No.
Prehearing exchange of information		19.31
Stipulations		19.32
Discovery		19.33
Subpoenas	19.8	19.34

Subpart E—Formal Hearings

Conduct of formal hearing	19.10	19.40
Authority of the presiding officer	19.10(a)	19.41
Judicial notice; admissibility of copies and proffers		19.42
Public hearings	19.10(c)	19.43
Confidentiality of proceeding	19.16	19.44
Summary disposition		19.45

Subpart F—Post Hearing Procedures; Initial Decision

Proposed findings and conclusions; briefs	19.11(a)	19.50
Submissions by limited participants		19.51
Initial decision of presiding officer	19.11(b)	19.52

Subpart G—Review by the Comptroller; Final Decision

Review of initial decision		19.60
Oral argument before the Comptroller	19.13	19.61
Notice of submission to the Comptroller	19.14	19.62
Remand of the initial decision or order		19.63
Decision of the Comptroller	19.15	19.64
Stay of proceeding or final order		19.65

Subpart H—Cease-and-Desist Proceedings

Scope	19.18	19.70
Notice of charges and answer	19.19	19.71
Cease-and-desist orders	19.21	19.72

Subpart I—Assessment of Civil Money Penalty

Scope	19.22	19.80
Notice of assessment; request for hearing; answer	19.23	19.81
Notice of hearing	19.24	19.82
Assessment orders	19.25	19.83

Subpart J—Removals, Suspensions and Prohibitions Generally

Scope	19.26	19.90
Notice of intention to remove and answer	19.27	19.91
Removal or prohibition by order	19.29	19.92

Subpart K—Removals, Suspensions and Prohibitions When a Crime is Charged or a Conviction is Obtained

Scope	19.30	19.100
Suspension or removal	19.31	19.101

	Old section No.	New section No.
Informal hearing	19.32	19.102
Initial and final decisions	19.33	19.103

Subpart L—Disciplinary Proceedings Involving the Federal Securities Laws

Scope	19.34	19.110
Notice of charges and answer	19.35	19.111
Disciplinary orders	19.36	19.112

Subpart M—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

Scope	19.37	19.120
Application for exemption	19.38	19.121
Newspaper notice	19.39	19.122
Informal hearing	19.40	19.123
Decision of the Comptroller	19.41	19.124

Subpart N—Formal Investigations

Scope	19.42	19.130
Confidentiality of formal investigations	19.43	19.131
Order to conduct a formal investigation	19.44	19.132
Rights of witnesses	19.45	19.133
Service of subpoena and payment of witness fees	19.46	19.134

Subpart O—Parties and Representational Practice Before the OCC: Standards of Conduct

Scope		19.140
Sanctions relating to conduct in an administrative proceeding		19.141
Censure, suspension or debarment		19.142
Definitions		19.143
Eligibility to practice		19.144
Incompetence		19.145
Disreputable conduct		19.146
Initiation of disciplinary proceeding		19.147
Conferences		19.148
Proceedings under this subpart		19.149
Effect of suspension, debarment, or censure		19.150
Petition for reinstatement		19.151

Provisions Deleted From Former Part 19

Depositions	19.9	
Temporary cease- and-desist orders	19.20	
Suspension or prohibition by notice	19.28	

IV. Special Studies**Executive Order 12291**

The OCC has determined that this proposed rule is not a "major rule" and therefore does not require a regulatory impact analysis.

Regulatory Flexibility Act

It is certified that the rule would not have a significant economic impact on a substantial number of small banks or other small entities.

List of Subjects in 12 CFR Part 19

Administrative practice and procedure, Banking, *Ex parte* communication, Hearing procedure, National banks.

Authority and Issuance

For the reasons set out in the preamble, part 19 of chapter I of title 12 of the Code of Federal Regulations is revised to read as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE**Subpart A—General Provisions**

- Sec.
19.0 Scope of part.
19.1 Definitions.
19.2 Retained authority.
19.3 Appearance and practice before the OCC.
19.4 *Ex parte* communications.
19.5 Time limits.

Subpart B—Institution of Adjudicatory Proceedings; Pleadings; Motions; Interlocutory Review

- 19.10 Commencement of proceedings; notice and answer.
19.11 Filing and service.
19.12 Form and signature of papers.
19.13 Good faith certification.
19.14 Motions.
19.15 Interlocutory review.

Subpart C—Parties and Limited Participation by Nonparties

- 19.20 Parties.
19.21 Limited participation by nonparties.
19.22 Comptroller's review of ruling on limited participation.

Subpart D—Prehearing Procedures; Prehearing Conferences; Discovery

- 19.30 Prehearing conferences; procedural matters.
19.31 Prehearing exchange of information.
19.32 Stipulations.
19.33 Discovery.
19.34 Subpoenas.

Subpart E—Formal Hearings

- 19.40 Conduct of formal hearing.
19.41 Authority of the presiding officer.
19.42 Judicial notice; admissibility of copies and proffers.
19.43 Public hearings.
19.44 Confidentiality of proceeding.
19.45 Summary disposition.

Subpart F—Post Hearing Procedures; Initial Decision

- 19.50 Proposed findings and conclusions; briefs.
19.51 Submissions by limited participants.
19.52 Initial decision of presiding officer.

Sec.

Subpart G—Review by the Comptroller; Final Decision

- 19.60 Review of initial decision.
- 19.61 Oral argument before the Comptroller.
- 19.62 Notice of submission to the Comptroller.
- 19.63 Remand of the initial decision or order.
- 19.64 Decision of the Comptroller.
- 19.65 Stay of proceeding or final order.

Subpart H—Cease-and-Desist Proceedings

- 19.70 Scope.
- 19.71 Notice of charges and answer.
- 19.72 Cease-and-desist orders.

Subpart I—Assessment of Civil Money Penalty

- 19.80 Scope.
- 19.81 Notice of assessment; request for hearing; answer.
- 19.82 Notice of hearing.
- 19.83 Assessment orders.

Subpart J—Removals, Suspensions, and Prohibitions Generally

- 19.90 Scope.
- 19.91 Notice of intention to remove and answer.
- 19.92 Removal or prohibition by order.

Subpart K—Removals, Suspensions, and Prohibitions When a Crime is Charged or a Conviction is Obtained

- 19.100 Scope.
- 19.101 Suspension or removal.
- 19.102 Informal hearing.
- 19.103 Initial and final decisions.

Subpart L—Disciplinary Proceedings Involving the Federal Securities Laws

- 19.110 Scope.
- 19.111 Notice of charges and answer.
- 19.112 Disciplinary orders.

Subpart M—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

- 19.120 Scope.
- 19.121 Application for exemption.
- 19.122 Newspaper notice.
- 19.123 Informal hearing.
- 19.124 Decision of the Comptroller.

Subpart N—Formal Investigations

- 19.130 Scope.
- 19.131 Confidentiality of formal investigations.
- 19.132 Order to conduct a formal investigation.
- 19.133 Rights of witnesses.
- 19.134 Service of subpoena and payment of witness fees.

Subpart O—Parties and Representational Practice before the OCC: Standards of Conduct

- 19.140 Scope.
- 19.141 Sanctions relating to conduct in an administrative proceeding.
- 19.142 Censure, suspension or debarment.
- 19.143 Definitions.
- 19.144 Eligibility to practice.
- 19.145 Incompetence.
- 19.146 Disreputable conduct.

Sec.

- 19.147 Initiation of disciplinary proceeding.
- 19.148 Conferences.
- 19.149 Proceedings under this subpart.
- 19.150 Effect of suspension, debarment or censure.

19.151 Petition for reinstatement.

Authority: 12 U.S.C. 1817(j), 1818, 1820 (secs. 7(j), 8 and 10 of the Federal Deposit Insurance Act); 15 U.S.C. 78j (h) and (i), 78o-4(c), 78o-5, 78q-1, 78u, 78w (secs. 12 (h) and (i), 15B(c), 15C, 17A, 21 and 23 of the Securities Exchange Act of 1934); 5 U.S.C. 554-557; 12 U.S.C. 504, 93b, 1818(b), 1972 (secs. 101, 103, 107, and 801 of the Financial Institutions Regulatory and Interest Rate Control Act of 1978); 12 U.S.C. 3102, 3108(a) (secs. 4 and 13(a) of the International Banking Act of 1978); 15 U.S.C. 78o-5 (sec. 101 of the Government Securities Act of 1986); 31 U.S.C. 330.

Subpart A—General Provisions**§ 19.0 Scope of part.**

The rules of practice and procedure prescribed by this part are applicable to adjudicative proceedings for which a hearing is provided by law or is for other reason ordered by the Comptroller, and to formal investigations. These adjudications include:

(a) The issuance of a cease-and-desist order;

(b) The assessment of a civil money penalty;

(c) The issuance of an order to remove or suspend from office any officer or director or to prohibit any officer or director or other person from participating in the conduct of the affairs of a bank;

(d) The imposition of sanctions upon the following persons when the OCC is the appropriate regulatory agency:

(1) Any municipal securities dealer or any person associated or seeking to become associated with such a municipal securities dealer;

(2) Any government securities broker or dealer or any person associated with such government securities broker or dealer; or

(3) Any transfer agent or any person associated or seeking to become associated with such transfer agent.

(e) The exemption of an issuer or class of issuers from the provisions of sections 12(g), 13, or 14 of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78j(g), 78n or 78m), or the exemption from section 16 of the Exchange Act (15 U.S.C. 78p) of any officer, director or beneficial owner of securities of an issuer;

(f) The disapproval of a proposed acquisition of control of a national bank or District of Columbia bank;

(g) The censure, suspension, or debarment of persons who practice before the OCC; and

(h) The revocation of authority of a bank to exercise trust powers.

§ 19.1 Definitions.

For purposes of this part:

(a) *Adjudicatory proceeding* means a judicial-type proceeding leading to the formulation of a final order.

(b) *Bank* means a national bank, District of Columbia bank, or a foreign bank operating as a Federal branch or agency.

(c) *Comptroller* means the Comptroller of the Currency or persons delegated to perform the function of the Comptroller of the Currency under this part.

(d) *Decisional employees* means those members of the Comptroller's or presiding officer's staffs who have not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Comptroller or presiding officer in preparing orders, decisions, and other documents under this part.

(e) *Ex parte communication* means an oral or written communication that is not on the record and for which reasonable prior notice to all parties has not been given, but does not include requests for procedural information or status reports on any matter or proceeding covered by this part.

(f) *Institution-affiliated party* has the meaning given to the term in section 3(u) of the Federal Deposit Insurance Act (12 U.S.C. 1813(u)).

(g) *Interested person* includes a party or other person who is likely to be adversely affected or aggrieved by matters to be adjudicated in a proceeding, and officers, agents, employees, associates, affiliates, attorneys, accountants or other representatives when acting on behalf of the interested person.

(h) *OCC* means the Office of the Comptroller of the Currency.

(i) *OCC's interested division* means the OCC organizational unit that is engaged in an investigative or prosecutorial function in connection with a proceeding under this part.

(j) *Party* means a person named as a party in any notice which commences a proceeding or any person who is admitted as a party to the proceeding. The OCC's interested division is a party to a proceeding under this part.

(k) *Person* means an individual, sole proprietor, partnership, corporation (including a bank), unincorporated association, trust, joint venture or other entity or organization.

(l) *Presiding officer* means an administrative law judge or any agency employee or other person designated by the Comptroller or the Comptroller's delegate to conduct a hearing.

§ 19.2 Retained authority.

(a) Nothing in this part impairs the powers of examination and investigation conferred on the Comptroller by 12 U.S.C. 481, 1818(n), 1820(c), or any other provision of law.

(b) The Comptroller may, at any time during a proceeding, perform, or direct or waive the performance of, any act that could be performed by a presiding officer. Prior to the appointment of a presiding officer, the Comptroller may act in the place of and with the authority of, a presiding officer, except that the Comptroller may not hear a case on the merits or issue an initial decision.

§ 19.3 Appearance and practice before the OCC.

(a) *Appearance before the Comptroller or a presiding officer—*

(1) *By non-attorneys.* An individual may appear in his or her own behalf; a member of a partnership may represent the partnership; a bona fide and duly authorized employee or officer of a corporation, trust, or association may represent the corporation, trust, or association; and an authorized officer or employee of any government unit, agency, or authority may represent that unit, agency, or authority if the individual, partner, officer or employee is not suspended or debarred from practice before the OCC.

(2) *By attorneys.* Any person who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia, and who is not suspended or debarred from practice before the OCC, may represent parties before the OCC.

(3) *Notice of appearance.* An individual, partner, officer, employee, or attorney appearing in a representative capacity before the OCC in an adjudicatory proceeding shall file a notice of appearance with the Hearing Clerk at or before such time that the representative submits papers or appears on behalf of the person. The notice of appearance must contain a written declaration that the representative is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. Any person who files a notice of appearance in an adjudicatory proceeding thereby agrees, and is authorized, to accept service on behalf of the represented party.

(b) *Conflict of interest in representation.* No person shall appear in a proceeding or a formal investigation conducted pursuant to subpart N in a representative capacity if that representation may be materially limited by that person's responsibilities to a third person, or by the person's own interests. The Comptroller or the presiding officer may take protective measures at any stage of a proceeding or during a formal investigation to cure a potential or actual conflict of interest in representation, including the issuance of an order disqualifying an individual from appearing in a representative capacity for the duration of the proceeding or investigation.

§ 19.4 Ex parte communications.

(a) *Prohibitions against ex parte communications.* The presiding officer shall not consult with any party on any matter relevant to the merits of a proceeding prior to entry of a final order which is no longer subject to review or reconsideration, without notice and opportunity for all parties to participate. No party or person shall make or knowingly cause to be made to the Comptroller, the presiding officer, or decisional employees of the Comptroller or the presiding officer an *ex parte* communication relevant to the merits of a proceeding. The Comptroller, presiding officer, or decisional employees shall not make or knowingly cause to be made to a party or any person, an *ex parte* communication relevant to the merits of a proceeding.

(b) *Procedures for handling ex parte communications.* The Comptroller, presiding officer, decisional employee, or party who receives, makes, or knowingly causes to be made an *ex parte* communication prohibited by this section shall:

(1) Place on the record of the proceeding—

- (i) All such written communications;
- (ii) Memoranda stating the substance of all such oral communications; and
- (iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; and

(2) Promptly serve written notice of the *ex parte* communication and responses thereto on all parties to the proceedings.

(c) *Sanctions.* Any party or person who makes a prohibited *ex parte* communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Comptroller or the presiding officer including, but not

limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

(d) *Applicability of prohibitions and sanctions against ex parte communications.*

(1) The prohibitions of this section against *ex parte* communications shall apply:

(i) To any person who has actual knowledge that a proceeding has been or will be commenced pursuant to § 19.10(a).

(ii) To all persons who have been given notice that a proceeding has been or will be commenced pursuant to § 19.10(a).

(2) The prohibitions of this section shall remain in effect until a final order has been entered in a proceeding which is no longer subject to review or reconsideration by the OCC.

§ 19.5 Time limits.

(a) *Computation.* In computing any period of time prescribed or allowed by this part, the date of the act or event from which the period of time begins to run is not included. The last day of the period computed is included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays and Federal holidays are not included in the computation if the time period for performance is 10 days or less. If the period of time runs from the date of service, and service has been made by first-class, registered or certified mail, three days shall be added to the prescribed period from the date when the matter served is postmarked. If service has been made by an express or overnight delivery service, one day shall be added to the prescribed period. Whenever any party has the right or is required to do some act within a period of time prescribed in this part from the date of service, and such service is made by mail, three days shall be added to the prescribed period; provided, however, that if an express or overnight delivery service is used, one day shall be added to the prescribed period.

(b) *Change of time limits.* Except as otherwise provided by law or this part, the presiding officer may extend the time limits prescribed by these rules or by any notice or order issued in the proceedings. Prior to the appointment of a presiding officer and after the filing of an initial decision pursuant to § 19.52, the Comptroller may rule on extensions or may delegate the authority to rule on requests for extensions.

(c) *Stipulation of time limits.* The parties may, by stipulation, propose changes to the time limits specified by this part or any notice or order issued thereunder. The parties shall notify the presiding officer or the Comptroller in writing of any stipulation. If the presiding officer or the Comptroller does not within 10 days of receipt of the written notification disapprove the proposed stipulated time limits and set different time limits, the stipulated time limits shall stand.

Subpart B—Institution of Adjudicatory Proceedings; Pleadings; Motions; Interlocutory Review

§ 19.10 Commencement of proceedings; notice and answer.

(a) *Notice.* Proceedings are commenced by a notice served by the OCC's interested division upon the party or parties afforded a hearing and filed with the Hearing Clerk. The notice may, for example, be a notice of charges, described in §§ 19.71 or 19.111, or a notice of assessment of a civil money penalty, described in § 19.81. In the case of a disapproval of a change in bank control, the OCC's interested division shall, after receipt of a timely request for hearing from a proposed acquirer initially disapproved as provided under § 5.50(g)(1)(iv) of this chapter, commence the proceeding by issuance of a notice of reasons for the proposed disapproval. The matters of fact and law alleged in a notice may be amended by the OCC's interested division at any stage of the proceedings. Such amended notice may require an answer from the party or parties served and the presiding officer or Comptroller may set a new hearing date.

(b) *Answer is required.* Unless a different period is specified by the Comptroller or the presiding officer, a party who does not wish to consent to a final order must file an answer within 20 days after being served with a notice which commences the proceeding. Any subsequent notice which contains amended allegations and by its terms requires an answer must similarly be answered within 20 days.

(c) *Content of answer.* An answer filed under this section shall state concisely any defenses and specifically admit or deny each allegation in the notice. Any allegation not denied specifically is deemed to be admitted. A party who lacks information or knowledge sufficient to form a belief as to the truth of any particular allegation shall so state. A statement of lack of information has the effect of a denial. A party who intends in good faith to deny only a part of an allegation shall specify

what is true and deny only the remainder.

(d) *Effect of failure to answer.* Failure of a party to file an answer required by this section within the prescribed time or failure of a party to contest any allegation contained in the notice shall constitute a waiver of the right to appear and contest the allegations contained in the notice. If no answer is filed, upon the motion of the OCC's interested division, the presiding officer or the Comptroller, without further notice to the party, shall find the facts in the notice to be as alleged and may, without any review of the facts, issue and serve such order as he or she deems appropriate. The Comptroller or the presiding officer, for good cause shown, may permit the filing of a delayed answer.

§ 19.11 Filing and service.

(a) *Filing.* Parties shall submit their filings to the OCC Hearing Clerk or other person designated to receive documents for the OCC in an administrative proceeding. Filings to be made with the Hearing Clerk include any notice which commences a proceeding and any answer thereto; any amended notice and answer thereto; any notice of hearing; any order or ruling (except one which is entered during the course of a hearing and is part of the hearing transcript); every written motion, memorandum, notice, appearance, proof of service or similar paper; any stipulation of the parties; the hearing transcript together with all exhibits admitted into evidence; proposed findings and conclusions by the parties; the findings and conclusions and initial decision of the presiding officer; parties' notices of appeal and exceptions; any submissions by limited participants; and the decision and final order of the Comptroller.

(b) *Address for filing.* All materials required to be filed with the OCC or the Comptroller in any proceeding shall be filed with the Hearing Clerk, Office of the Comptroller of the Currency, Washington, DC 20219. Any document submitted for filing may be sent to the Hearing Clerk by mail, express mail or hand delivery but must be received by the Hearing Clerk in Washington, DC, or postmarked on or before the due date for the particular filing. Any party who serves documents on another party shall simultaneously or promptly thereafter file such documents with the Hearing Clerk.

(c) *Service.* Except as otherwise provided in this part, each party who files papers must serve a copy thereof on the presiding officer, the Comptroller or the Comptroller's delegate if a presiding officer has not been appointed,

and on the attorney or representative of record of every other party. A copy of all papers filed with the presiding officer or the Comptroller shall be simultaneously or promptly thereafter served on the parties or their representatives. Service may be by personal service, private delivery service or by first-class, registered, certified, or express mail. Service shall be made at the last known address of the party as shown on the records of the OCC. A document is deemed served when, in the case of first class, registered, or certified mail, it is postmarked. In the case of express or overnight delivery services, a document is deemed served when delivered to a facility which provides such services.

(d) *Proof of service.* A party must file proof of service before action may be taken thereon. The proof shall show the date and manner of service, and may be by written declaration of the person making service, or by certificate of an attorney or other representative of record. Failure to file proof of service shall not affect the validity of service. The presiding officer may allow the proof to be amended or supplied, unless to do so would result in material prejudice to a party.

§ 19.12 Form and signature of papers.

All documents filed by a party must be printed or typewritten, and copies served upon the presiding officer, the Comptroller, and the parties must be clear and legible. The original of all papers filed by any party shall be signed by that party's attorney. If a party is not represented by an attorney, the papers shall be signed by the party, an officer thereof, or a duly authorized representative.

§ 19.13 Good faith certification.

(a) *General requirement.* After the Comptroller or the Comptroller's delegate issues the notice, every subsequent written presentation by a party represented by an attorney shall be signed by at least one attorney of record in his or her individual name and shall state that attorney's address and telephone number. A party who is not represented by an attorney shall sign his or her presentation of record and state his or her address and telephone number.

(b) *Effect of signature.* (1) The signature of an attorney or party constitutes a certification that the attorney or party has read the written presentation of record; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading, motion, or other

presentation of record is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a written presentation of record is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any attorney or party constitutes a certification by him or her that to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, the statements are well grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(d) *Sanctions for violations.* If a pleading, motion, or other presentation is made in violation of this section, on the motion of any party or on his or her own motion, the presiding officer or the Comptroller may impose upon the attorney, the represented party, or both, an appropriate sanction authorized in Subpart O.

§ 19.14 Motions.

(a) *Written and oral motions.* An application or request for an order or ruling, unless otherwise specifically provided in this part, must be made by a written motion. A motion may be made orally in a hearing unless the presiding officer or the Comptroller directs that the oral motion be reduced to writing. All motions must state the order or relief sought and be supported by a concise statement of the grounds or basis for the relief and the authority relied upon. Each party must serve the motion on the opposing party or parties and file the motion with the Hearing Clerk pursuant to § 19.11. All written motions must be accompanied by a proposed order.

(b) *Representation and disposition.* Prior to the appointment of a presiding officer, the Comptroller may rule on all motions, defer them until the appointment of a presiding officer or delegate the authority to rule upon motions for extensions of time. After a presiding officer has been appointed, the presiding officer shall rule on all motions, except that the Comptroller shall rule on motions for public hearings

filed pursuant to § 19.43 and motions for interlocutory review which do not require certification by the presiding officer pursuant to § 19.15(e) and § 19.15(f). The presiding officer may for good cause, clearly stated in writing, refer any motion to the Comptroller for a ruling. The Comptroller may request that the presiding officer file a proposed disposition of the motion with relevant comments and observations. If the Comptroller does not find sufficient good cause to support the referral of the motion, the Comptroller may remand the motion to the presiding officer. The Comptroller shall rule upon all motions made after an initial decision is filed by the presiding officer pursuant to § 19.52.

(c) *Motions to dismiss.* (1) The presiding officer may deny, but may not grant, any motion which would dismiss the proceedings or which would result in a final determination on the merits of the proceedings. The presiding officer must submit any ruling which would grant such a motion as a recommendation to the Comptroller who will make the final ruling. The Comptroller shall make such a final ruling on motions to dismiss in all proceedings covered by this part, including suspension, removal and prohibition proceedings commenced pursuant to Subpart J.

(2) The presiding officer may not submit a ruling that grants a motion described in paragraph (c)(1) of this section to the Comptroller unless the presiding officer finds for good cause in writing that the granting of the motion is warranted. The presiding officer shall explain the specific basis for the good cause finding.

(d) *Answers to motions.* Within 10 days after service of any written motion, or within a longer or shorter period established by this part or fixed by the presiding officer or the Comptroller, any party may file a written answer or objection to a motion. All answers to written motions must be accompanied by a proposed order. Any party who does not file a response to a motion is deemed to have consented to the relief sought by the motion. The party requesting the motion has no right to reply to the answer, except as permitted by the presiding officer or the Comptroller. Any requests by parties to file additional replies must be made by filing a motion for permission to respond with the presiding officer or the Comptroller.

(e) *Dilatory motions not permitted.* Repetitive or numerous motions which raise the same issues or arguments or deal with the same subject matter are considered dilatory motions and are not permitted. The Comptroller or the

presiding officer may assess costs attendant to processing or ruling on dilatory motions against the filing party. Filing of dilatory motions by a party may form the basis for disciplinary action under Subpart O of this part.

(f) *Oral arguments; briefs.* No oral argument will be held on motions except as otherwise directed by the presiding officer or the Comptroller. Written memoranda, briefs, affidavits and other relevant material or documents may be filed in support of a motion or an answer.

§ 19.15 Interlocutory review.

(a) *General rule.* The Comptroller will not review a ruling of a presiding officer prior to the submission of the record to the Comptroller unless extraordinary circumstances warrant the Comptroller's prompt review.

(b) *Motion to the presiding officer.* (1) During a proceeding any party may file a motion requesting the presiding officer to certify a contested ruling to the Comptroller. The motion shall be made in writing within 10 days of the presiding officer's notification to parties of the ruling. The motion must state the grounds relied on, reasons why the presiding officer should permit interlocutory review, and a statement regarding the manner in which the Comptroller's prompt review will prevent detriment to the public interest or irreparable harm to any person. Any opposing party may file an answer to a motion for interlocutory review within 10 days of receipt of the motion.

(2)(i) A presiding officer may not certify a ruling for interlocutory review to the Comptroller unless a party so requests and the presiding officer determines that the Comptroller's prompt review of the contested ruling is necessary to prevent detriment to the public interest or irreparable harm to any person. Further, the presiding officer must find that:

(A) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion; or

(B) An immediate appeal from the ruling may materially advance the ultimate termination of the proceeding; or

(C) Subsequent review or consideration of the issue at the conclusion of the proceeding will be an inadequate remedy; or

(D) A subsequent reversal of the ruling would cause unusual delay or expense, taking into consideration the probability of such a reversal.

(ii) Upon consideration of the factors enumerated in paragraph (b)(2)(i) of this

section, the presiding officer shall either grant or deny the motion. If the motion is granted, the presiding officer shall certify the ruling for review by the Comptroller. The certification must be in writing and shall set forth the relevant issues, an explanation of the ruling on the issues, and specific reasons for granting the moving party's request for review by the Comptroller. If the presiding officer denies the motion or if the Comptroller declines to consider the certified ruling, the objection to the ruling will be reviewed in the ordinary course of the proceeding as if the appeal had not been made.

(c) *Appeal to the Comptroller.* The Comptroller shall dismiss a motion for interlocutory appeal if the presiding officer's certification was improvidently granted or if the Comptroller determines that prompt consideration of the motion is not necessary pursuant to the standards set forth in paragraph (b)(2)(i) of this section.

(d) *Suspension of proceeding.* Neither a motion for interlocutory review nor the granting of a motion under this section shall suspend or stay the proceeding before the presiding officer unless otherwise ordered by the presiding officer or the Comptroller. Any stay or series of stays of longer than 30 days must be approved by the Comptroller upon the motion of a party, or the request of the presiding officer.

(e) *Appeal to the Comptroller without certification.* Interlocutory review by appeal to the Comptroller without certification by the presiding officer is allowed for motions for limited participation as a nonparty pursuant to § 19.21 and for motions contesting the presiding officer's order as to which documents and sessions of a hearing are to be made public when a public hearing has been granted pursuant to § 19.43. The provisions of this section shall apply except that motions for interlocutory review must be addressed to, and ruled upon by, the Comptroller or the Comptroller's delegate. Parties must file motions with the Hearing Clerk.

(f) *Interlocutory review upon Comptroller's motion.* The Comptroller may, as deemed appropriate and in the interest of justice, and on his or her own motion or the motion of any party, review any ruling of the presiding officer which has been denied certification.

Subpart C—Parties and Limited Participation by Nonparties

§ 19.20 Parties.

The parties to an adjudicatory proceeding are the OCC's interested division and each party named in the

notice pursuant to § 19.10. A party ceases to be a party when a default is entered against the party named in the notice or when the OCC's interested division accepts an offer of settlement from the party.

§ 19.21 Limited participation by nonparties.

Any person with an official interest in the proceeding and who desires to participate orally or in writing in a proceeding must make a written application in the form of a motion with the presiding officer. The motion shall set forth the grounds upon which the application is based, the nature and extent of the applicant's interest in the proceeding, the issues on which the applicant wishes to participate, and the manner in which the applicant wishes to participate. Any party may file an answer to the motion. The presiding officer shall rule on the motion and may, by order, permit oral or written participation by nonparties to such extent and upon such terms as the presiding officer deems proper.

§ 19.22 Comptroller's review of ruling on limited participation.

The presiding officer's rulings on applications under § 19.21 are subject to interlocutory review by the Comptroller without certification by the presiding officer in accordance with § 19.15(e) of this part.

Subpart D—Prehearing Procedures; Prehearing Conferences; Discovery

§ 19.30 Prehearing conferences; procedural matters.

(a) *Prehearing conferences and memoranda.* In any proceeding the presiding officer may require the submission of prehearing memoranda by the parties. The presiding officer also may schedule one or more prehearing conferences for the purpose of:

- (1) Clarifying issues;
- (2) Examining the possibility of obtaining stipulations, admissions of fact, or determining the authenticity or content of documents;
- (3) Determining matters of which official notice may be taken;
- (4) Discussing amendments to pleadings;
- (5) Limiting the number of witnesses;
- (6) Discussing the adoption of shortened procedures;
- (7) Discussing other matters that may aid the orderly disposition of the proceeding; and
- (8) Promoting a fair and expeditious hearing.

(b) *Presiding officer's prehearing memorandum.* At or within a reasonable time following the conclusion of a

prehearing conference, the presiding officer shall serve each party with a prehearing memorandum containing agreements reached and any procedural determinations made, unless the conference has been recorded and transcribed and a copy of the transcript has been made available to each party. Any agreements reached among the parties at the prehearing conference or otherwise, become part of the record and bind the parties unless the presiding officer permits otherwise for good cause shown.

§ 19.31 Prehearing exchange of information.

(a) *Witnesses.* Within a period of time established by the presiding officer and prior to the scheduled hearing date, each party shall file with the presiding officer a written list of witnesses to be called to testify at the hearing. The list must contain the name and address of each witness, a brief description of the matter about which the witness is to testify and the relevance of the witness' testimony. The party filing the list of witnesses must serve a copy on every other party to the proceeding. The presiding officer shall not allow any witness not included in the witness list to testify, except for good cause shown.

(b) *Exhibits.* Within a period of time established by the presiding officer and prior to the scheduled hearing date, each party shall file with the presiding officer a written list of exhibits to be offered into evidence at the hearing. This list of exhibits must contain a brief description of the content and relevance of each exhibit, together with a copy of each exhibit. The party filing the list of exhibits and copies of exhibits must serve a copy on every other party to the proceeding. The presiding officer shall not, except for good cause shown, accept into evidence at hearing any exhibit which is not listed and copied.

(c) *Effect of failure to exchange prehearing information.* (1) Any party that fails to exchange proposed exhibits or witness lists as required by subsections (a) and (b) shall be deemed to have forfeited its right to introduce any exhibits or call any witness in its case-in-chief at the hearing. Any exhibit or witness not included in the party's final exhibit or witness list may not be introduced or called by that party in its case-in-chief at the hearing. Relief from this subsection may be granted by the presiding officer only for good cause shown and upon such terms as are just.

(2) Upon the failure of any party to comply fully and in good faith with the requirements of this section, including, without limitation, the failure to

stipulate to facts or to the authenticity or admissibility of documents as to which there is no good-faith dispute, the presiding officer may, on the motion of any party, or on the presiding officer's own motion, impose any appropriate sanction authorized in subpart O.

§ 19.32 Stipulations.

The parties may, by stipulation in writing at any stage of the proceeding, or orally at hearing, agree on any pertinent facts in the proceeding. Signed stipulations and oral stipulations made part of the record shall be binding on the parties.

§ 19.33 Discovery.

(a) *General rule.* This section does not grant an absolute right to discovery, but allows the presiding officer, upon a showing of relevance, materiality, and need, to permit discovery. Discovery in administrative proceedings is not favored and, in practice, is allowed only when a showing of good cause clearly has been made by the applying party.

(b) *Upon order.* Upon application of a party, the presiding officer may order discovery at any stage of a proceeding.

(1) *Application.* The party requesting discovery must file a written application in the form of a motion with the presiding officer stating:

- (i) The nature or type of discovery requested;
- (ii) The matters with which the discovery will be concerned;
- (iii) The relevance of the discovery;
- (iv) The materiality of the discovery; and

(v) The demonstrated need for the discovery. The party making the application must serve a copy of the application on every other party to the proceeding.

(2) *Response to an application.* A party opposing the application for discovery may file a response to the application within 10 days. Failure of a party to respond to an application is deemed a waiver of objection to the discovery sought by the applying party.

(3) *Decision.* If, after consideration of all circumstances, the presiding officer determines that discovery in whole or in part is unnecessary, unreasonable, oppressive, excessive in scope or unduly burdensome, the presiding officer may refuse to grant the application or may grant it only on such condition as fairness requires. The presiding officer shall notify each of the parties of the action taken on an application.

(c) *Protective orders.* At any time during discovery, on motion of any party, and with sufficient grounds, the presiding officer may terminate discovery or limit the scope and manner

of discovery. Grounds for terminating or limiting discovery include a showing that: The discovery is being conducted in bad faith or in such manner that will unreasonably annoy, embarrass, or oppress the witness; there is insistent probing into privileged matters; the discovery is outside the scope of the application; or there are unwarranted attempts to pry into a party's preparation for trial.

(d) *Deadline for applications.*

Requests for discovery may be made up to 15 days before the scheduled hearing date. No discovery will be allowed after that time unless the presiding officer permits an exception for good cause shown.

§ 19.34 Subpoenas.

(a) *Issuance.* Upon application of a party, the presiding officer may issue a subpoena or *subpoena duces tecum* requiring the attendance of a witness or the production of documents in connection with a hearing. The attendance of a witness or the production of documents may be required from any place in any state or territory that is subject to the jurisdiction of the United States.

(1) *Application.* The party seeking the subpoena or *subpoena duces tecum* must file a written application with the presiding officer stating:

- (i) The name and address of the witness or the person who is to produce the documents;
- (ii) The matters about which the witness is expected to testify or the contents of the documents;
- (iii) The relevance of the testimony or documents;

(iv) The time and place for testifying or production of documents; and

(v) The address where the testimony is to be taken or the documents are to be produced. The party making the application must serve a copy of the application and the proposed subpoena or *subpoena duces tecum* on every other party to the proceeding. During sessions of a hearing the application may be made orally on the record.

(2) *Response to an application.* A party opposing the issuance of a subpoena or *subpoena duces tecum* may file a response to the application within 10 days. In the case of an oral application during sessions of a hearing, a response may be made orally on the record. Failure of a party to respond to an application is deemed a waiver of the right to object to the subpoena or *subpoena duces tecum*.

(3) *Decision.* If, after consideration of all circumstances, the presiding officer determines that the subpoena or *subpoena duces tecum* in whole or in

part is unreasonable, oppressive, excessive in scope or unduly burdensome, the presiding officer may refuse to issue a subpoena or *subpoena duces tecum* or may issue it only on such conditions as fairness requires. The presiding officer shall serve on each of the parties notice of the action taken on an application.

(b) *Service.* If an application is granted in whole or in part, the party seeking the subpoena or *subpoena duces tecum* must serve it on the person named therein, or the person's attorney, by personal service or certified mail. The party serving the subpoena or *subpoena duces tecum* must file with the presiding officer an affidavit as proof of service.

(c) *Fees.* Witnesses who are subpoenaed may be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States. Expenses in accordance with this paragraph shall be paid by the party on whose application the subpoena or *subpoena duces tecum* is issued.

(d) *Motion to quash.* A person named in a subpoena or *subpoena duces tecum* who is not a party to the proceeding may file a motion to revoke, quash, or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party requesting the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than 10 days after the date of service of the subpoena.

Subpart E—Formal Hearings

§ 19.40 Conduct of formal hearing.

(a) *Application of Administrative Procedure Act.* Unless otherwise required by statute or regulation, formal hearings will be conducted in accordance with the requirements of the Administrative Procedure Act (5 U.S.C. 554-557).

(b) *Attendance at hearing.* Except as provided in subpart L (§§ 19.110-19.112) and unless otherwise ordered by the Comptroller pursuant to § 19.43, a hearing shall be private and shall be attended only by the presiding officer, the parties, parties' representatives or counsel, limited participants and witnesses while testifying and accompanied by their counsel, and other persons determined by the presiding officer or the Comptroller to have an official interest in the proceeding.

(c) *Hearing rules.* The OCC's interested division will be the first party to present an opening statement and a

closing statement, and shall make a rebuttal statement after the responding party's closing statement. Every party shall have the right to present its case or defense by oral and documentary evidence and testimony and to conduct such cross-examination as may be required for full disclosure of the facts. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Objections to the admission or exclusion of evidence shall be concise and, together with rulings thereon, shall become part of the record. Argument on objections may, at the discretion of the presiding officer, take place off the record. Failure to object to admission or exclusion of evidence or to any ruling constitutes a waiver of the right to object.

(d) *Transcript.* The hearing shall be transcribed. The transcript shall be certified by the official reporter and, together with all exhibits accepted into evidence, filed with the Hearing Clerk. Copies shall be furnished to the presiding officer and the OCC's interested division at OCC expense and shall be made available to other parties at their expense for the cost of the transcript. The Hearing Clerk shall notify the parties when the hearing transcript has been filed.

(e) *Conduct during hearings.* All participants in a proceeding before the Comptroller or a presiding officer shall conduct themselves with dignity and in an orderly and ethical manner. Unethical or improper conduct at any proceeding before the Comptroller or a presiding officer shall be grounds for exclusion from the proceeding and suspension for the duration of the proceeding without the benefit of a hearing, or other appropriate action by the Comptroller or presiding officer, including disciplinary action authorized by subpart O of this part.

§ 19.41 Authority of the presiding officer.

In any proceeding under this part, the presiding officer shall have all powers necessary to conduct a fair and impartial hearing, including, but not limited to, the power to:

- (a) Conduct formal hearings in accordance with the provisions of this part;
- (b) Administer oaths and examine witnesses;
- (c) Compel the production of documents;
- (d) Compel the appearance of witnesses by the issuance of subpoenas as authorized by law;
- (e) Issue decisions and orders;
- (f) Take any action authorized by the Administrative Procedure Act;

(g) Disqualify himself or herself by motion made by a party or on his or her own motion;

(h) Exercise, for the purpose of the hearing and in regulating the conduct of the proceeding, the powers vested in the Comptroller as are necessary and appropriate; and

(i) Do all other things necessary to discharge the duties of a presiding officer.

§ 19.42 Judicial notice; admissibility of copies and proffers.

(a) *Admissibility.* Except as is otherwise set forth in this section, relevant, material and reliable evidence that is not unduly repetitive shall be admissible to the fullest extent authorized by the Administrative Procedure Act, other applicable statutes, and the common law. The Federal Rules of Evidence shall not be used as a standard for determining admissibility of evidence in proceedings under this subpart. Without limiting the foregoing guidelines for admissibility of evidence, any evidence that would be admissible in a United States district court under the Federal Rules of Evidence is admissible in any proceeding governed by subpart E.

(b) *Official notice.* Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States and any material information in the official public records of the OCC. All matters officially noticed by the presiding officer shall appear on the record. If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as an original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Any documents, including relevant Reports of Examination and Reports of Supervisory Activity prepared by the OCC, whether or not such documents were prepared as a result of joint examinations or visits conducted with other Federal regulators, shall be admissible, either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, or outlines to summarize, illustrate, or simplify the presentation of testimony. Such documents may, in the presiding officer's discretion, be used with or without being admitted into evidence.

(d) When an objection to a question or line of questioning propounded to a

witness is sustained, the examining attorney may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness. The presiding officer shall retain rejected exhibits, adequately marked for identification, for the record.

§ 19.43 Public hearings.

(a) *General rule.* Except as otherwise provided under this part, any hearing conducted pursuant to this subpart shall be private, unless the Comptroller, in his or her discretion and after considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.

(b) *Exemption and disciplinary hearings under the Federal securities laws.* (1) Any hearing conducted under section 12(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78(1)(h)) to provide exemptions from Exchange Act reporting requirements, and under sections 15B, 15C, and 17A of the Exchange Act (15 U.S.C. 78o-4, 78o-5, and 78q-1) to remedy violations of the Federal Securities laws and any applicable regulations involving the offer or sale to, or purchase from, customers of securities, shall be public unless the Comptroller in his or her discretion determines that a private hearing is necessary to protect the public interest.

(2) Hearings enumerated in paragraph (b)(1) of this section shall not be conducted pursuant to the procedures established under paragraphs (a), and (c) through (f) of this section.

(c) *Institution of public hearing through the issuance of a notice of charges.* The Comptroller, in his or her discretion, after considering the views of the party to be afforded the hearing, and after determining it to be in the public interest, may institute a public proceeding through or contemporaneously with, the issuance of a notice of charges. Public proceedings instituted under this subsection shall not be conducted pursuant to the procedures established under paragraphs (a), and (d) through (f) of this section.

(d) *Motion for public hearings.* After the filing of a notice pursuant to § 19.10, any party may move that the hearing be held in public. The motion shall be filed with the Comptroller in writing at least 30 days prior to the scheduled commencement of the hearing, and shall state reasons why a public hearing is necessary to protect the public interest. Any opposing party may file an answer

within 10 days of service of the motion. Any party who does not file an answer to a motion shall be deemed to have no views regarding the holding of a public hearing. At the discretion of the Comptroller, any party may be given an additional opportunity to respond and the Comptroller may request additional information or documents from any party.

(e) *Briefs, oral arguments.* Motions and answers filed pursuant to paragraph (d) of this section may be supported by a brief, written memorandum or any other relevant documents. No oral arguments will be allowed unless the Comptroller so directs.

(f) *Comptroller's decision.* After considering the views of the parties, and such other pertinent information as the Comptroller deems necessary, the Comptroller shall issue an order granting or denying the motion for a public hearing. The Comptroller reserves the right to authorize at any time alternative methods of protecting the public interest, such as the release of the decision, transcript, final order, other documents, or a summary or parts thereof. The Comptroller's order granting a public hearing may direct that particular sessions of the hearing be closed and provide for the protection of any confidential interest that might otherwise be affected.

(g) *Conduct of public hearing by the presiding officer.* (1) If the Comptroller determines that the hearing will be public, the presiding officer shall, prior to the commencement of the hearing, examine the documents to be introduced at the hearing, including transcripts, reports of supervisory activity, and proposed hearing testimony, and determine which sessions will be held and what materials will be produced in private. The remainder of the proceeding, including motions, pleadings, evidence and testimony, will be open to the public in accordance with the usual judicial principles of public disclosure.

(2) The presiding officer's order as to documents and sessions that may be made public is subject to interlocutory review by the Comptroller in accordance with § 19.15(e) upon the request of any party.

§ 19.44 Confidentiality of proceeding.

(a) Unless otherwise ordered by the Comptroller, any information obtained and any papers and documents filed during a proceeding are for the confidential use of the Comptroller, the presiding officer, and the parties.

(b) Unless otherwise ordered by the Comptroller, any information obtained and any papers and documents filed

during any proceeding described in § 19.43(b) are available to the public.

§ 19.45 Summary disposition.

When the parties to an administrative proceeding agree that there are no genuine issues of material fact between them, they may file a joint motion for summary disposition. The motion for summary disposition shall be accompanied by a statement of the material facts as to which the parties agree there is no genuine issue, supported by appropriate documentary evidence, and admissions in pleadings. If the presiding officer grants the motion, he or she shall issue an order and an initial decision containing conclusions of law based on the parties' statement of facts.

Subpart F—Post Hearing Procedures; Initial Decision

§ 19.50 Proposed findings and conclusions; briefs.

Within 30 days after the hearing transcript has been filed, the parties may file written proposed findings of fact, conclusions of law, and a proposed order with, and as specified by, the presiding officer. Proposed findings and conclusions must be supported by citation to any relevant authorities and refer to applicable pages or portions of the record. Briefs may be filed in support of proposed findings and conclusions either as part of the same document or in a separate document. Any proposed finding or conclusion not timely filed with the presiding officer may be regarded as waived.

§ 19.51 Submissions by limited participants.

Submissions by a person admitted as a limited participant pursuant to § 19.21 of this part are permitted under terms as determined by the presiding officer. The time for filing such submissions shall not be longer than the time allowed for parties to file proposed findings of fact and conclusions of law pursuant to § 19.50.

§ 19.52 Initial decision of presiding officer.

(a) *Time for filing.* Within 45 days after the expiration of time allowed for the filing of proposed findings and conclusions by the parties under § 19.50, or within such further time as the Comptroller or the Comptroller's delegate for good cause allows, the presiding officer shall file an initial decision which must include a statement of findings of fact and conclusions of law supported by citation to any relevant authorities and references to applicable pages or portions of the record. The presiding officer also shall

issue a proposed order. The presiding officer shall serve promptly a copy of the decision and order on the parties. After filing an initial decision, the presiding officer shall certify the complete record to the Hearing Clerk.

(b) *Effect of initial decision.* The initial decision becomes the decision of the Comptroller 30 days after service thereof, except:

(1) The decision is not final as to any party who has filed a notice of appeal pursuant to § 19.60; and

(2) The decision is not final as to any party if, within 30 days after receipt of the initial decision and order, the Comptroller docket the case for review or stays the effective date of the decision. The Hearing Clerk shall notify the parties if the Comptroller stays the effective date of the decision or accepts the initial decision as final. In the event that the initial decision becomes the final decision of the Comptroller with respect to a party, that party will be notified by the Hearing Clerk. The notice to the party will state that the time for filing a notice of appeal by the party has expired and that the Comptroller has decided not to initiate review of the initial decision. The notice will specify the effective date of the final order.

Subpart G—Review by the Comptroller; Final Decision

§ 19.60 Review of initial decision.

(a) *Notice of appeal.* Any party to a proceeding may seek review of the presiding officer's initial decision by the Comptroller. Such review is initiated by filing a notice of appeal with the Hearing Clerk within 10 days after service of the initial decision. No extension of the 10-day time limit shall be granted. The Hearing Clerk shall serve a copy of the notice of appeal on each party.

(b) *Exceptions and briefs; time for filing.* The review process must be perfected through the filing of exceptions and briefs by the party seeking review by the Comptroller. Exceptions must be filed within 30 days after the filing of the notice of appeal or within such further time as the Comptroller for good cause permits pursuant to § 19.5 of this part. The exceptions must address specifically the party's dissent from the presiding officer's findings of fact and conclusions of law. Within 15 days after service of exceptions on any other party, the served party may file a response to the exceptions. A party shall file concurrently with its exceptions or response to another party's exceptions a

brief in support thereof. No additional briefs shall be permitted by either party, except as permitted by the Comptroller for good cause shown. If exceptions, briefs, or the response thereto, are not filed within the time specified, the opposing party may move for dismissal of the review.

(c) *Exceptions and briefs: number of copies.* A party must file an original and one copy of all exceptions and briefs submitted under this section with the Hearing Clerk and serve a copy on each party.

(d) *Page limit.* Except by permission of the Comptroller for good cause shown, principal briefs shall not exceed 50 pages and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of citations and any addendum containing statutes, rules, regulations, etc.

(e) *Effect of failure to file a notice of review.* For purposes of the Comptroller's review, failure to file a notice of appeal constitutes a waiver of the right to object to the findings and conclusions contained in the presiding officer's initial decision. Any objection or issue not raised as an exception shall be deemed waived and may not be argued before the Comptroller.

§ 19.61 Oral argument before the Comptroller.

Upon the Comptroller's own initiative or on the written request of any party made within the time for filing a notice of appeal pursuant to § 19.60, the Comptroller may order and hear oral argument on the initial decision and the findings and conclusions on which the initial decision is based. A written request must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. Oral argument before the Comptroller is recorded unless otherwise ordered.

§ 19.62 Notice of submission to the Comptroller.

After the expiration of the time for filing exceptions pursuant to § 19.60(b), or after any oral argument before the Comptroller, the Hearing Clerk shall notify the parties promptly that the case has been submitted to the Comptroller for final decision. The Comptroller may request additional briefs, documents or information from the presiding officer or any party and set time limits for the submission of such documents.

§ 19.63 Remand of the initial decision or order.

The Comptroller may for good cause shown set aside any notice that the case has been submitted for final decision

and remand the initial decision or order or any portion thereof to the presiding officer. The Comptroller shall specify the reasons for the remand, the action required of the presiding officer and the period of time for completion.

§ 19.64 Decision of the Comptroller.

The Comptroller's decisional employees may advise and assist the Comptroller in the consideration of the case. The Comptroller ordinarily will consider the whole record on review and base the determination thereon. However, the Comptroller may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties or, in the event the Comptroller docket a case for review, to those issues that the Comptroller deems necessary for review. The Hearing Clerk shall serve copies of the Comptroller's final decision on the parties.

§ 19.65 Stay of proceeding or final order.

Unless specifically ordered by the Comptroller or a reviewing court, an action for judicial review of the Comptroller's final decision shall not operate as a stay of the order. Nor shall an interlocutory appeal or collateral attack of a ruling, order, procedure, or any other aspect of a proceeding subject to this part operate as a stay of the proceeding or order.

Subpart H—Cease-and-Desist Proceedings

§ 19.70 Scope.

This subpart and subpart E of this part apply to cease-and-desist proceedings instituted by the Comptroller against an institution-affiliated party. Subparts E and H shall not apply to the issuance of temporary cease-and-desist orders.

§ 19.71 Notice of charges and answer.

A cease-and-desist proceeding is commenced by service of a notice of charges. The notice shall fix a date, time, and place for hearing. The hearing date shall be not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or later date is set by the Comptroller at the request of any party so served. A party served with a notice of charges may file an answer as prescribed by § 19.10. Any party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative shall be deemed to have consented to the issuance of the cease-and-desist order. The presiding officer, without further proceedings, shall find the facts to be as alleged in the notice of charges and shall issue an initial decision and order.

§ 19.72 Cease-and-desist orders.

In the event of consent to the issuance of a cease-and-desist order, or if on the record filed by the presiding officer the Comptroller finds that any violation or practice specified in the notice of charges has been established, the Comptroller may issue and serve on the bank or institution-affiliated party concerned an order to cease-and-desist from any violation or practice. The order may, by provisions which may be mandatory or otherwise, require the bank or any institution-affiliated party to cease-and-desist from the same and, further, to take affirmative action to correct the conditions resulting from any such violation or practice. A cease-and-desist order is effective 30 days after service (except in the case of a cease-and-desist order issued on consent, which is effective at the time specified therein), and remains effective and enforceable as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

Subpart I—Assessment of Civil Money Penalty

§ 19.80 Scope.

This subpart and subpart E apply to proceedings instituted by the Comptroller to assess a civil money penalty against a bank or an institution-affiliated party for a violation of any law or regulation.

§ 19.81 Notice of assessment; request for hearing; answer.

A civil money penalty assessment proceeding is commenced by service of a notice of assessment of civil money penalty. The notice shall contain a statement of the facts constituting the alleged violations, the amount of civil money penalty being assessed, and shall inform the bank or institution-affiliated party of the right to request an agency hearing within 20 days after the notice is served. If a hearing is not requested within the prescribed 20-day period, the assessment constitutes a final and unappealable order. A party requesting a hearing must file an answer as prescribed in § 19.10.

§ 19.82 Notice of hearing.

A bank or person requesting a hearing will be informed by notice of the date, time, and place set for hearing. The notice of hearing shall be given at least 30 days in advance of the scheduled hearing date. Any party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative shall be deemed to have consented to the

issuance of an assessment order. The presiding officer, without any further proceedings, shall find the facts to be as alleged in the notice of assessment and shall issue an initial decision and order.

§ 19.93. Assessment orders.

In the event of consent, or if on the record filed by the presiding officer the Comptroller finds that any violation specified in the notice of assessment has been established, the Comptroller may serve an order of assessment of civil money penalty on the bank or institution-affiliated party concerned. An assessment order is effective immediately on service, or on such other date as may be specified therein, and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

Subpart J—Removals, Suspensions and Prohibitions Generally

§ 19.90. Scope.

This subpart and subpart E apply to proceedings by the Comptroller to remove or suspend any institution-affiliated party, and prohibit such institution-affiliated party from further participation in any manner in the conduct of the affairs of a bank. The Comptroller may by notice suspend from office or prohibit the institution-affiliated party from participating in bank affairs until the administrative proceedings are completed. Subparts E and J shall not apply to the issuance of a temporary suspension order.

§ 19.91. Notice of intention to remove and answer.

Removal and prohibition proceedings are commenced by the service of a notice of intention to remove from office or prohibit an individual from further participation in any manner in the affairs of a bank. The notice shall state the grounds for removal or prohibition and shall fix a time and place for hearing. The hearing date shall not be earlier than 30 days nor later than 60 days after the notice is served, unless the Comptroller sets an earlier or later date at the request of either the party served or the Attorney General of the United States. A party afforded a hearing who does not appear at the hearing personally or by a duly authorized representative shall be deemed to have consented to the issuance of an order of removal from office or prohibition from participation in the affairs of the bank. The presiding officer, without further proceedings, shall find the facts to be as alleged in

the notice of intention to remove and shall issue an initial decision and order.

§ 19.92. Removal or prohibition by order.

Following the administrative hearing, the findings and conclusions of the presiding officer shall be certified to the Board of Governors of the Federal Reserve System ("Board") for determination of whether any final order of removal or prohibition should be issued. If on the record filed by the presiding officer, the Board finds that the charges have been established, the Board may issue an order of removal from the office or prohibition from participation in the affairs of the bank. In the event of consent, the Comptroller may issue an order of removal from the office or prohibition from participation in the affairs of a bank. An order is effective 30 days after service (except in the case of an order issued on consent, which is effective at the time specified therein), and remains effective and enforceable until stayed, modified, terminated, or set aside by action of the Comptroller or the Board, whichever is appropriate, or a reviewing court.

Subpart K—Removals, Suspensions, and Prohibitions When a Crime Is Charged or a Conviction Is Obtained

§ 19.100. Scope.

This subpart applies to informal hearings afforded to any institution-affiliated party who has been suspended or removed from office or prohibited from further participation in bank affairs by a notice or order issued by the Comptroller.

§ 19.101. Suspension or removal.

The Comptroller may serve a notice of suspension or order of removal or prohibition on an institution-affiliated party. A copy of such notice or order shall be served on the bank, whereupon the institution-affiliated party involved will immediately cease service to the bank or participation in the affairs of the bank. The notice or order shall indicate the basis for suspension, removal or prohibition and shall inform the institution-affiliated party of the right to request in writing, to be received by the OCC within 30 days from the date that the institution-affiliated party was served with such notice or order, an opportunity to show at an informal hearing that continued service to or participation in the conduct of the affairs of the bank does not, or is not likely to, pose a threat to the interest of the bank's depositors or threaten to impair public confidence in the bank. The written request must be sent by certified mail to, or served personally

with a signed receipt on, the District Administrator in the OCC district in which the bank in question is located, or to the Deputy Comptroller for Multinational Banking, Washington, DC, if the bank is supervised by the Multinational Banking Department. The request must state specifically the relief desired and the grounds on which that relief is based.

§ 19.102. Informal hearing.

(a) *Issuance of hearing order.* After receipt of a request for hearing, the District Administrator or the Deputy Comptroller for Multinational Banking, whichever is appropriate, shall notify the petitioner requesting the hearing and the interested OCC division of the date, time and place fixed for the hearing. The hearing shall be scheduled to be held not later than 30 days from the date when a request for hearing is received, unless the time is extended at the written request of the petitioner. The District Administrator or the Deputy Comptroller for Multinational Banking, whichever is appropriate, shall extend the hearing date only for a specific period of time and shall take appropriate action to ensure that the hearing is not unduly delayed.

(b) *Appointment of presiding officer.* The Comptroller or the Comptroller's delegate shall appoint one or more agency employees to preside over the hearing. The presiding official(s) shall not have been involved in the proceeding, a factually-related proceeding or the underlying enforcement action in a prosecutorial or investigative role. The OCC's interested division shall appoint an attorney to represent the OCC at the hearing.

(c) *Waiver of oral hearing.* The petitioner may elect to have the matter determined by the presiding officer solely on the basis of written submissions. The petitioner must present the submissions to the presiding officer not later than 10 days prior to the hearing, or within such shorter time period as the presiding officer permits, along with a signed document waiving the statutory right to appear and make oral argument.

(d) *Hearing procedures—(1) Conduct of hearing.* Hearings under this subpart are not subject to the provisions of subpart E of these rules or the adjudicative provisions of the Administrative Procedure Act (5 U.S.C. 554-557).

(2) *Powers of the presiding officer.* The presiding officer shall determine all procedural issues that are governed by this subpart and has the authority to permit or limit the number of witnesses

and to impose time limitations as he or she deems reasonable. The informal hearing will not be governed by the formal rules of evidence. All oral presentations, when permitted, and documents deemed by the presiding officer to be relevant and material to the proceeding and not unduly repetitious will be considered. The presiding officer may ask questions of any person participating in the hearing, and may make any rulings reasonably necessary to facilitate the effective and efficient operation of the hearing.

(3) *Presentation.* (i) The petitioner may appear personally or through counsel at the hearing to present relevant written materials and oral argument. Copies of affidavits, memoranda or other written material to be presented at the hearing must be provided to the presiding officer and to the other parties in the oral argument not later than 10 days prior to the hearing, or within such other shorter time period as permitted by the presiding officer. (ii) If the petitioner or OCC attorney desires to present oral testimony or witnesses at the hearing, a written request must be made to the presiding officer not later than 10 days prior to the hearing, or within a shorter time period as permitted by the presiding officer. The names of proposed witnesses should be included, along with the general nature of the expected testimony, and the reasons why oral testimony is necessary. Oral testimony or witnesses generally will not be admitted unless a specific and compelling need is demonstrated. Witnesses, if admitted, shall be sworn. (iii) In deciding on any suspension, the presiding officer will not consider the ultimate question of the guilt or innocence of the individual with respect to the criminal charges which are outstanding. In deciding on any removal, the presiding officer will not consider challenges to or efforts to impeach the validity of the conviction. The presiding officer may consider facts in either situation, however, which show the nature of the events on which the indictment or conviction was based.

(4) *Record.* A verbatim transcript of the proceedings may be taken if the petitioner requests a transcript and agrees to pay all expenses, or if the presiding officer determines that the nature of the case warrants a transcript. The presiding officer may order the record to be kept open for a reasonable period following the hearing, not to exceed five business days, to permit the petitioner or the OCC attorney to submit additional documents for the record. Thereafter, no further submissions will

be accepted except for good cause shown.

§ 19.103 Initial and final decisions.

(a) The presiding officer shall issue an initial decision to the Comptroller and shall serve promptly a copy of the decision on the parties to the proceeding. The decision shall include a summary of the facts and arguments of the parties. Within 10 days of service, parties may submit to the Comptroller comments on the presiding officer's initial decision.

(b) Within 60 days following the hearing or receipt of the petitioner's written submission, the Comptroller shall notify the petitioner by registered mail as to whether the suspension or removal from office, and prohibition from participation in any manner in the affairs of the bank, will be affirmed, terminated or modified. The Comptroller's decision shall include a statement of reasons supporting the decision. The Comptroller's decision shall constitute a final and unappealable order.

(c) A finding of not guilty or other disposition of the charge on which a notice of suspension was based shall not preclude the Comptroller from thereafter instituting removal proceedings pursuant to section 8(e) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)) and subpart J of this part.

(d) A removal or prohibition by order remains in effect until terminated by the Comptroller. A suspension or prohibition by notice remains in effect until the criminal charge is disposed of or until terminated by the Comptroller.

(e) A suspended or removed individual may petition the Comptroller to reconsider the decision any time after the expiration of a 12-month period from the date of the decision, but no petition for reconsideration may be made within 12 months of a previous petition. The petition must state specifically the relief sought and the grounds therefor, and may be accompanied by a supporting memorandum and any other documentation the petitioner wishes to have considered. No hearing need be granted on the petition for reconsideration.

Subpart L—Disciplinary Proceedings Involving the Federal Securities Laws

§ 19.110 Scope.

(a) This subpart and subpart E apply to proceedings by the Comptroller to determine whether, pursuant to authority contained in sections 15B(c)(5), 15C(c)(2)(A), 17A(c)(3), and 17A(c)(4)(C) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78o-4(c)(5),

78o-5(c)(2)(A), 78q-1(c)(3)(A), and 78q-1(c)(4)(C), to take disciplinary action against the following:

(1) A bank which is a municipal securities dealer, or any person associated or seeking to become associated with such a municipal securities dealer;

(2) A bank which is a government securities broker or dealer, or any person associated with such government securities broker or dealer; or

(3) A bank which is a transfer agent, or any person associated or seeking to become associated with such transfer agent.

(b) In addition to the issuance of disciplinary orders after opportunity for hearing, the Comptroller or the Comptroller's delegate may issue and serve any notices and temporary or permanent cease-and-desist orders and take any actions that are authorized by section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), sections 15B(c)(5), 15C(c)(2)(B), and 17A(d)(2) of the Exchange Act, and other subparts of this part against the following:

(1) The parties listed in paragraph (a) of this section; and

(2) A bank which is a clearing agency.

(c) Notwithstanding the provisions of § 19.43, proceedings commenced pursuant to this subpart shall be instituted on a public basis, unless otherwise ordered by the Comptroller. Nothing in this part impairs the powers conferred on the Comptroller by other provisions of law.

§ 19.111 Notice of charges and answer.

Proceedings are commenced by service of a notice of charges on a bank or associated person. The notice shall indicate the type of disciplinary action being contemplated and the grounds therefor, and shall fix a date, time and place for hearing. The hearing shall be set for a date at least 30 days after service of the notice. A party served with a notice of charges may file an answer as prescribed in § 19.10. Any party who fails to appear at a hearing personally or by a duly authorized representative shall be deemed to have consented to the issuance of a disciplinary order.

§ 19.112 Disciplinary orders.

(a) In the event of consent, or if on the record filed by the presiding officer, the Comptroller finds that any act or omission or violation specified in the notice of charges has been established, the Comptroller or the Comptroller's delegate may serve on the bank or persons concerned a disciplinary order,

as provided in the Exchange Act. The order may:

(1) Censure, limit the activities, functions or operations, or suspend or revoke the registration of a bank which is a municipal securities dealer;

(2) Censure, suspend or bar any person associated or seeking to become associated with a municipal securities dealer;

(3) Censure, limit the activities, functions or operations, or suspend or bar a bank which is a government securities broker or dealer;

(4) Censure, limit the activities, functions or operations, or suspend or bar any person associated with a government securities broker or dealer;

(5) Deny registration to, limit the activities, functions, or operations or suspend or revoke the registration of a bank which is a transfer agent; or

(6) Censure or limit the activities or functions, or suspend or bar, any person associated or seeking to become associated with a transfer agent.

(b) A disciplinary order is effective when served on the party or parties involved and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the Comptroller or a reviewing court.

Subpart M—Exemption Hearings Under Section 12(h) of the Securities Exchange Act of 1934

§ 19.120 Scope.

The rules in this subpart apply to informal hearings that may be held by the Comptroller to determine whether, pursuant to authority in sections 12 (h) and (i) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78f (h) and (i), to exempt in whole or in part an issuer or a class of issuers from the provisions of section 12(g), or from section 13 or 14 of the Exchange Act, 15 U.S.C. 78f(g), 78m or 78n, or whether to exempt from section 18 of the Exchange Act, 15 U.S.C. 78p, any officer, director, or beneficial owner of securities of an issuer. The only issuers covered by this subpart are banks whose securities are registered pursuant to section 12(g) of the Exchange Act, 15 U.S.C. 78f(g). The Comptroller may deny an application for exemption without a hearing.

§ 19.121 Application for exemption.

An issuer or an individual (officer, director or shareholder) may submit a written application for an exemption order to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219. The application must specify the type of exemption sought and the reasons therefor,

including an explanation of why an exemption would not be inconsistent with the public interest or the protection of investors. The Securities and Corporate Practices Division shall inform the applicant in writing whether a hearing will be held to consider the matter.

§ 19.122 Newspaper notice.

Upon being informed that an application will be considered at a hearing, the applicant shall publish a notice one time in a newspaper of general circulation in the community where the issuer's main office is located. The notice must state: (a) The name and title of any individual applicants; (b) the type of exemption sought; (c) the fact that a hearing will be held; and (d) a statement that interested persons may submit to the Securities and Corporate Practices Division, Office of the Comptroller of the Currency, Washington, DC 20219, within 30 days from the date of the newspaper notice, written comments concerning the application and a written request for an opportunity to be heard. The applicant shall promptly furnish a copy of the notice to the Securities and Corporate Practices Division, and to bank shareholders.

§ 19.123 Informal hearing.

(a) *Conduct of proceeding.* The adjudicative provisions of the Administrative Procedure Act (5 U.S.C. 554-557), formal rules of evidence and subpart E of this part do not apply to hearings conducted under this subpart.

(b) *Notice of hearing.* Following the comment period, the Comptroller shall send a notice which fixes a date, time and place for hearing to each applicant and to any person who has requested an opportunity to be heard.

(c) *Presiding officer.* The Comptroller shall designate a presiding officer to conduct the hearing. The presiding officer shall determine all procedural questions not governed by this subpart, and may limit the number of witnesses and impose time and presentation limitations as are deemed reasonable. At the conclusion of the informal hearing, the presiding officer shall issue an initial decision to the Comptroller as to whether the exemption should issue. The decision shall include a summary of the facts and arguments of the parties.

(d) *Attendance.* The applicant and any person who has requested an opportunity to be heard may attend the hearing, with or without counsel. The hearing shall be open to the public. In addition, the applicant and any other hearing participant may introduce oral

testimony through such witnesses as the presiding officer shall permit.

(e) *Order of presentation.* (1) The applicant may present an opening statement of a length decided by the presiding officer. Then each of the hearing participants, or one among them selected with the approval of the presiding officer, may present an opening statement. The opening statement should summarize concisely what the applicant and each participant intends to show.

(2) The applicant shall have an opportunity to make an oral presentation of facts and materials or submit written materials for the record. One or more of the hearing participants may make an oral presentation or a written submission.

(3) After the above presentations, the applicant, followed by one or more of the hearing participants, may make concise summary statements reviewing their position.

(f) *Witnesses.* The obtaining and use of witnesses is the responsibility of the parties afforded the hearing. All witnesses shall be present on their own volition, but any person appearing as a witness may be questioned by each applicant, any hearing participant, and the presiding officer. Witnesses shall be sworn unless otherwise directed by the presiding officer.

(g) *Evidence.* The presiding officer may exclude data or materials deemed to be improper or irrelevant. Formal rules of evidence do not apply. Documentary material must be of a size consistent with ease of handling and filing. The presiding officer may determine the number of copies that must be furnished for purposes of the hearing.

(h) *Transcript.* A transcript of each proceeding will be arranged by the OCC, with all expenses, including the furnishing of a copy to the presiding officer, being borne by the applicant.

§ 19.124 Decision of the Comptroller.

Following the conclusion of the hearing and the submission of the record and the presiding officer's initial decision to the Comptroller for decision, the Comptroller or the Comptroller's delegate shall notify the applicant and all persons who have so requested in writing of the final disposition of the application. Exemptions granted shall be in the form of an order which shall specify the type of exemption granted and its terms and conditions.

Subpart N—Formal Investigations**§ 19.130 Scope.**

This subpart and § 19.3(b) apply to formal investigations initiated by order of the Comptroller or the Comptroller's delegate and pertain to the exercise of powers specified in 12 U.S.C. 481, 1818(n) and 1820(c), and section 21 of the Securities Exchange Act of 1934, 15 U.S.C. 78u. This subpart does not restrict or in any way affect the authority of the Comptroller to conduct examinations into the affairs or ownership of banks and their affiliates.

§ 19.131 Confidentiality of formal investigations.

Information or documents obtained in the course of a formal investigation are confidential and shall be disclosed only in accordance with the provisions of part 4 of this chapter.

§ 19.132 Order to conduct a formal investigation.

A formal investigation begins with the issuance of an order signed by the Comptroller or the Comptroller's delegate. The order shall designate the person or persons who will conduct the investigation. Such persons are authorized, among other things, to issue subpoenas duces tecum, to administer oaths, and receive affirmations as to any matter under investigation by the Comptroller. Upon application and for good cause shown, the Comptroller may limit, modify, or withdraw the order at any stage of the proceedings.

§ 19.133 Rights of witnesses.

(a) Any person who is compelled or requested to furnish testimony, documentary evidence, or other information with respect to any matter under formal investigation shall, on request, be shown the order initiating the investigation.

(b) Any person who, in a formal investigation, is compelled to appear and testify, or who appears and testifies by request or permission of the Comptroller, may be accompanied, represented, and advised by counsel. The right to be accompanied, represented, and advised by counsel shall mean the right of a person testifying to have an attorney present at all times while testifying and to have the attorney (1) advise the person before, during and after the conclusion of testimony, (2) question the person briefly at the conclusion of testimony to clarify any of the answers given, and (3) make summary notes during the testimony solely for the use of the person.

(c) Any person who has given or will give testimony and counsel representing the person may be excluded from the taking of testimony of any other witness.

(d) Any person who is compelled to give testimony is entitled to inspect any transcript that has been made of the testimony but may not obtain a copy if the Comptroller's representatives conducting the proceedings have cause to believe that the contents should not be disclosed pending completion of the investigation.

(e) Any designated representative conducting an investigative proceeding shall report to the Comptroller any instances where a person has been guilty of dilatory, obstructionist or insubordinate conduct during the course of the proceeding or any other instance involving a violation of this part. The Comptroller may take such action as the circumstances warrant, including exclusion of the offending individual or individuals from participation in the proceedings.

§ 19.134 Service of subpoena and payment of witness fees.

A subpoena may be served on the person named therein, or such person's attorney, by personal service or certified mail. A witness who is subpoenaed shall be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States. The expenses need not be tendered at the time a subpoena is served.

Subpart O—Parties and Representational Practice Before the OCC: Standards of Conduct**§ 19.140 Scope.**

This subpart contains rules relating to parties and representational practice before the OCC. These rules include the imposition of sanctions by the presiding officer or the Comptroller against parties or their counsel who fail to comply with the applicable statutory requirements of this part or an applicable order. They also cover disciplinary sanctions—censure, suspension or debarment—for individuals who appear before the OCC in a representational capacity. This representation includes, but is not limited to, the practice of attorneys and accountants. Employees of the OCC are not subject to subpart O disciplinary proceedings. The subpart sets forth the grounds for censure, suspension or debarment from practice before the OCC and rules relating to the initiation and conduct of suspension or debarment proceedings.

§ 19.141 Sanctions relating to conduct in an administrative proceeding.

(a) *General rule.* Appropriate sanctions may be imposed when any party or person representing a party has failed to comply with an applicable statute, regulation, or order, and that failure to comply (1) constitutes contemptuous conduct; (2) materially injures or prejudices another party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise; (3) is a clear and unexcused violation of an applicable statute, regulation, or order; or (4) unduly delays the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following: (1) Issuing an order against the party; (2) rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party; (3) precluding the party from contesting specific issues or findings; (4) precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party; (5) precluding the party from making a late filing or conditioning a late filing on any terms that are just; and (6) assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Procedure for imposition of sanctions.* (1) Upon the motion of any party, or on his or her own motion, the presiding officer may impose sanctions in accordance with this section. The presiding officer shall submit to the Comptroller for final ruling any sanction entering a final order that determines the case on the merits. (2) No sanction, other than refusal to accept late filings, authorized by this section shall be imposed without prior notice to all parties and an opportunity for any party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form, as the presiding officer directs. The opportunity to be heard may be limited to an opportunity to respond orally immediately after the act or inaction covered by this section is noted by the presiding officer. (3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, shall be subject to interlocutory review pursuant to § 19.15 in the same manner as any other ruling by the presiding officer.

(d) *Section not exclusive.* Nothing in this section shall be read as precluding the presiding officer or the Comptroller from taking any other action, or imposing any restriction or sanction,

authorized by applicable statute or regulation.

§ 19.142 Censure, suspension or debarment.

The Comptroller may censure an individual or suspend or debar such individual from practice before the OCC if he or she (a) is incompetent in representing a client's rights or interest in a significant matter before the OCC; or (b) engages, or has engaged, in disreputable conduct; or (c) refuses to comply with the rules and regulations in this part; or (d) with intent to defraud in any manner, willfully and knowingly deceives, misleads, or threatens any client or prospective client. The suspension or debarment of an individual shall be initiated only upon a finding by the Comptroller that the basis for the disciplinary action is sufficiently egregious.

§ 19.143 Definitions.

As used in §§ 19.140-19.151, the following terms shall have the meaning given in this section unless the content otherwise requires.

(a)(1) *Practice before the OCC* includes any matters connected with presentations to the OCC or any of its officers or employees relating to a client's rights, privileges or liabilities under laws or regulations administered by the OCC. Such matters include, but are not limited to, the preparation of any statement, opinion or other paper or document by an attorney, accountant, or other licensed professional which is filed with, or submitted to, the OCC, on behalf of another person in, or in connection with, any application, notification, report or document; the representation of a person at conferences, hearings and meetings; and the transaction of other business before the OCC on behalf of another person.

(2) *Practice before the OCC* does not include work prepared for a bank solely at its request for use in the ordinary course of its business.

(b) *Attorney* means any individual who is a member in good standing of the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia.

(c) *Accountant* means any individual who is duly qualified to practice as a certified public accountant or a public accountant in any state, possession, territory, commonwealth, or the District of Columbia.

§ 19.144 Eligibility to practice.

(a) *Attorneys.* Any attorney who is qualified to practice as an attorney and is not currently under suspension or

debarment pursuant to this subpart may practice before the OCC.

(b) *Accountants.* Any accountant who is qualified to practice as a certified public accountant or public accountant and is not currently under suspension or debarment by the OCC may practice before the OCC.

§ 19.145 Incompetence.

Incompetence in the representation of a client's rights and interests in a significant matter before the OCC is grounds for suspension or debarment. The term "incompetence" encompasses conduct that reflects a lack of the knowledge, judgment and skill that a professional would ordinarily and reasonably be expected to exercise in adequately representing the rights and interests of a client. Such conduct includes, but is not limited to:

(a) Handling a matter which the individual knows or should know that he or she is not competent to handle, without associating with a professional who is competent to handle such matter.

(b) Handling a matter without adequate preparation under the circumstances.

(c) Neglect in a matter entrusted to him or her.

§ 19.146 Disreputable conduct.

Disreputable conduct for which an individual may be censured, debarred or suspended from practice before the OCC includes, but is not limited to:

(a) Willfully violating or willfully aiding and abetting the violation of any provision of the Federal banking laws or the rules and regulations thereunder or conviction of any offense involving dishonesty or breach of trust.

(b) Knowingly giving false or misleading information, or participating in any way in the giving of false information to the OCC or any officer or employee thereof, or to any tribunal authorized to pass upon matters administered by the OCC in connection with any matter pending or likely to be pending before it. The term "information" includes facts or other statements contained in testimony, financial statements, applications for enrollment, affidavits, declarations, or any other document or written or oral statement.

(c) Directly or indirectly attempting to influence, or offering or agreeing to attempt to influence, the official action of any officer or employee of the OCC by the use of threats, false accusations, duress or coercion, by the offer of any special inducement or promise of advantage or by the bestowing of any gift, favor, or thing of value.

(d) Disbarment or suspension from practice as an attorney, or debarment or suspension from practice as a certified public accountant or public accountant, by any duly constituted authority of any state, possession, commonwealth, or the District of Columbia for the conviction of a felony or misdemeanor involving moral turpitude in matters relating to the supervisory responsibilities of the OCC, where the conviction has not been reversed on appeal.

(e) Knowingly aiding or abetting another individual to practice before the OCC during that individual's period of suspension, debarment, or ineligibility.

(f) Contemptuous conduct in connection with practice before the OCC, and knowingly making false accusations and statements, or circulating or publishing malicious or libelous matter.

(g) Suspension or debarment from practice before the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Securities and Exchange Commission, the Commodity Futures Trading Commission, or any other Federal agency based on matters relating to the supervisory responsibilities of the OCC.

(h) Willful violation of any of the regulations contained in this part.

§ 19.147 Initiation of disciplinary proceeding.

(a) *Receipt of information.* An individual, including any employee of the OCC, who has reason to believe that an individual practicing before the OCC in a representative capacity has engaged in any conduct that would serve as a basis for censure, suspension or debarment under § 19.142, may make a report thereof and forward it to the OCC or to such person as may be delegated responsibility for such matters by the Comptroller.

(b) *Censure without formal proceeding.* Upon receipt of information regarding an individual's qualification to practice before the OCC, the Comptroller or the Comptroller's delegate may, after giving the individual notice and opportunity to respond, censure such individual.

(c) *Institution of formal disciplinary proceeding.* When the Comptroller or the Comptroller's delegate has reason to believe that any individual who practices before the OCC in a representative capacity has engaged in conduct that would serve as a basis for censure, suspension or debarment under § 19.142, the Comptroller or the Comptroller's delegate may, after giving the individual notice and opportunity to

respond, institute a formal disciplinary proceeding against such individual. The proceeding will be conducted pursuant to § 19.149 and initiated by a complaint which names the individual as a respondent and is signed by the Comptroller or the Comptroller's delegate. Except in cases of willfulness, or when time, the nature of the proceeding, or the public interest do not permit, a proceeding under this section shall not be instituted until the respondent has been informed, in writing, of the facts or conduct which warrant institution of a proceeding and the respondent has been accorded the opportunity to comply with all lawful requirements or take whatever action may be necessary to remedy the conduct that is the basis for the initiation of the proceeding.

§ 19.148 Conferences.

(a) *General.* The Comptroller or the Comptroller's delegate may confer with a proposed respondent concerning allegations of misconduct or other grounds for censure, debarment or suspension, regardless of whether a proceeding for debarment or suspension has been instituted. If a conference results in a stipulation in connection with a proceeding in which the individual is the respondent, the stipulation may be entered in the record at the request of either party to the proceeding.

(b) *Resignation or voluntary suspension.* In order to avoid the institution of, or a decision in, a debarment or suspension proceeding, a person who practices before the OCC may consent to suspension from practice. At the discretion of the

Comptroller or the Comptroller's delegate, the individual may be suspended or debarred in accordance with the consent offered.

§ 19.149 Proceedings under this subpart.

Any hearing held under subpart O shall be held before a presiding officer who is an administrative law judge pursuant to procedures set forth in subparts E, F and G of this part. The Comptroller or the Comptroller's delegate shall appoint a person to represent the OCC in the hearing. Any person having prior involvement in the matter which is the basis for the suspension or debarment proceeding shall be disqualified from representing the OCC in the hearing. The hearing shall be closed to the public unless the Comptroller on his or her own initiative, or on the request of a party, otherwise directs. The presiding officer shall issue an initial decision to the Comptroller who shall issue the final decision and order. The Comptroller may censure, debar or suspend an individual, or take such other disciplinary action as the Comptroller deems appropriate.

§ 19.150 Effect of suspension, debarment or censure.

(a) *Debarment.* If the final order against the respondent is for debarment, the individual will not thereafter be permitted to practice before the OCC unless otherwise permitted to do so by the Comptroller.

(b) *Suspension.* If the final order against the respondent is for suspension, the individual will not thereafter be permitted to practice before the OCC during the period of suspension.

(c) *Censure.* If the final order against the respondent is for censure, the

individual may be permitted to practice before the OCC, but such individual's future representations may be subject to conditions designed to promote high standards of conduct. If a written letter of censure is issued, a copy will be maintained in the OCC's files.

(d) *Notice of debarment or suspension.* Upon the issuance of a final order for suspension or debarment, the Comptroller or the Comptroller's delegate shall give notice of the order to appropriate officers and employees of the OCC and to interested departments and agencies of the Federal Government. The Comptroller or the Comptroller's delegate shall also give notice to the appropriate authorities of the State in which any debarred or suspended individual is or was licensed to practice.

§ 19.151 Petition for reinstatement.

At the expiration of a period of time designated in the order of debarment, the Comptroller may entertain a petition for reinstatement from any person debarred from practice before the OCC. The Comptroller shall grant reinstatement only if the Comptroller is satisfied that the petitioner is likely to act in accordance with the regulations in this part, and that granting reinstatement would not be contrary to the public interest. Any request for reinstatement shall be limited to written submissions unless the Comptroller, in his or her discretion, affords the petitioner a hearing.

Dated: March 30, 1990.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 90-7765 Filed 4-5-90; 8:45 am]

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federal register

**Friday
April 6, 1990**

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

**Alteration of the Chicago Terminal
Control Area; IL; Proposed Rule**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 71****[Airspace Docket No. 89-AWA-13]****Proposed Alteration of the Chicago Terminal Control Area; Illinois****AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the Chicago, IL, Terminal Control Area (TCA). This proposal would raise the upper limits of the TCA to 10,000 feet mean sea level (MSL) to enable air traffic control (ATC) to provide terminal ATC service to arriving and departing turbojet aircraft in a TCA environment throughout transition to and from the en route structure. Additionally, this proposal would extend the lateral limits of the TCA to 25 nautical miles to the south in order to provide an area wherein ATC can enhance ATC service to Chicago Midway Airport. This proposal redefines several existing subareas, which would enhance air traffic procedures, and releases present TCA airspace not required for use by ATC.

DATES: Comments must be received on or before June 6, 1990.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 89-AWA-13, 800 Independence Avenue SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:

Jesse B. Bogan, Jr., Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views, or arguments as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWA-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published Federal Aviation Regulation (FAR) Amendment 91-78 (35 FR 7782) which enabled the establishment of TCA's. On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Establishes a single-class TCA; (b) requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has

received certain documented training; and (c) eliminates the helicopter exception from the minimum navigational equipment requirement.

On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S. registered civil aircraft (53 FR 3380). The rule adopted continues to require a transponder for operation in each TCA.

The FAA published a final rule on June 21, 1988, which requires Mode C equipment when operating within 30 miles of any designated TCA-primary airport from the surface up to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under visual flight rules (VFR) and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 27 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

Pre-NPRM Public Input**Airspace Meetings**

On September 17, 1988, a public meeting was held on the proposed modification of the Chicago TCA. Subsequently, a notice of informal airspace meeting for the modification of the Chicago TCA was mailed to pilots and aviation organizations within a 100-nautical mile radius of Chicago O'Hare International Airport. The notice contained an illustration of the FAA's proposed modification. The meeting was held on September 28, 1988, in Des Plaines, IL, and at this meeting a committee of airspace users in the Chicago area was formed. Three additional meetings were held on November 5 and December 3, 1988, and January 7, 1989. The meetings gave airspace users and local aviation interests an opportunity to present input on the proposed alteration of the Chicago TCA. The FAA also opened a public docket and provided a comment period for written public comments on the initial proposal.

Forty written comments were received during the public comment period following the informal airspace meetings. These comments were from fixed-wing aircraft and helicopter pilots, aviation organizations and services, sport parachutists, glider pilots, airport managers, private citizens, and military organizations. The comments received addressed the FAA's proposed alteration of the Chicago TCA as presented at the informal airspace meetings. Public comments, along with the FAA's findings and justifications, are summarized as follows:

1. Most commenters felt that the TCA boundaries should be defined by prominent geographical landmarks, visually identifiable, instead of being defined by means of electronic navigational aids.

The FAA is not proposing to change the lateral limits of the existing TCA, except for the proposed change to the southern boundary of the TCA. Therefore, due to a lack of sufficient prominent geographical landmarks to describe the present TCA and the proposed change in the southern boundary, the FAA proposes not to employ this method.

2. Numerous comments were received requesting that the FAA provide additional airspace for uncontrolled VFR operations at Palwaukee Airport, which is located 8 miles north of Chicago O'Hare International Airport.

The FAA agrees with the comments and has incorporated the following in the proposal. The FAA proposes to reduce the inner ring of the TCA, Area

A, to 6 nautical miles from 8.5 nautical miles. The 5-nautical mile radius "cutout" of the inner ring would be increased to clear Willow and Euclid roads in order to allow more airspace for VFR operations to Palwaukee Airport from the east and southeast. Also, the floor of the northwest section of the second ring of the TCA, Area B, would be raised to 2,500 feet MSL from 1,900 feet MSL.

3. Some commenters requested that the western boundary of the inner ring be moved to the east side of Interstate Highway 290 which would give VFR pilots a good landmark for this boundary.

The FAA did not agree with these comments for the same reason as outlined in number one of this section.

4. Several commenters requested a reduction in the second ring of the TCA, Area B, to 10 nautical miles from 10.5 nautical miles. This reduction in TCA airspace would give Schaumburg Air Park more usable airspace for approaches and would also allow VFR pilots to fly closer to the shore of the lake.

The FAA agreed with this comments and adopted the change in the proposal.

5. Several commenters suggested raising the floor of the third ring of the TCA, Area C, from 3,000 feet MSL to 3,600 feet MSL.

The FAA did not agree with this suggestion. Raising the floor of the third ring would not allow for adequate TCA service to aircraft on descent to Chicago O'Hare International Airport and to satellite airports in the area.

6. Several commenters suggested raising the floor of the TCA in the western section of the outer ring to allow more non-TCA airspace for unrestricted VFR operations at Du Page Airport.

The FAA adopted the suggestion and proposes to raise the floor of the TCA in the western section of the outer ring from 3,600 feet MSL to 4,000 feet MSL.

7. Comments were received to extend the southern section of the outer ring of the TCA from 20 nautical miles to 25 nautical miles which would allow for better transition of aircraft to Chicago Midway Airport.

The FAA agreed with the comments and adopted the change in the proposal.

8. Several commenters suggested that the ceiling of the TCA should remain at 7,000 feet MSL. Those making the comments indicated a preference for flying over the TCA rather than flying around it. They stated that raising the ceiling of the TCA to 10,000 feet MSL would make it difficult to fly over the TCA due to aircraft performance,

weather, and/or a lack of oxygen for extended flights up to 12,500 feet MSL.

The FAA did not adopt this suggestion due to safety factors involved with the increased air traffic in the Chicago area operating between 7,000 and 10,000 feet MSL. Traffic increases and changed operational conditions have generated a need to modify the current TCA since the TCA's implementation almost two decades ago. The existing volume of traffic cannot be accommodated by the present TCA airspace. This proposal takes into consideration the increase in the volume of traffic and updated procedures, and thereby provides TCA airspace for all IFR operations requiring TCA protection, while providing airspace for uncontrolled VFR operations.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the TCA at Chicago, IL. The number of enplaned passengers of Chicago O'Hare International Airport for 1988 was 28,273,863 and the total number of airport operations for the year was 803,028. The FAA believes that this increase in traffic, in conjunction with the complex operating environment in the Chicago area, dictates a need to alter the present TCA configuration. This alteration would better serve the users, as well as the FAA, by providing airspace configured to handle the increased amount of air traffic operations and new procedures. The FAA has determined that modifying the TCA at the Chicago O'Hare International Airport is in the interest of flight safety and would result in a greater degree of protection for the greatest number of people during flight in the terminal area. The proposed alteration is depicted on the attached chart.

Section 91.90 of part 91 of the Federal Aviation Regulations (14 CFR part 91) defines TCA's and prescribes operating rules for aircraft in airspace designated as a TCA. The TCA rule provides, in part, that prior to entering the TCA, any pilot arriving at any airport within the TCA or flying through the TCA must:

- (1) Obtain appropriate authorization from ATC;
- (2) Comply with applicable procedures established by ATC for pilot training operations at an airport within a TCA;
- (3) Hold at least a private pilot certificate; and
- (4) Meet the requirements of § 61.95 of the Federal Aviation Regulations (14

CFR part 61) if the aircraft is operated by a student pilot.

Any aircraft arriving at any airport within a TCA of flying through a TCA must: Have an operable VOR or TACAN receiver; have an operable two-way radio capable of communications with ATC or appropriate frequencies for that TCA; and be equipped with the applicable operating transponder and automatic altitude-reporting equipment specified in paragraph (a) of § 91.24 of the Federal Aviation Regulations, except as provided in paragraph (d) of that section. Unless otherwise authorized by ATC, all large, turbine-engine aircraft operating to or from a primary airport must be operated above the designated floors of a TCA. The pilot of any aircraft departing from an airport located within a TCA is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions. However, the TCA rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCA's may be found in §§ 71.12 and 71.401 of part 71 of the Federal Aviation Regulations (14 CFR part 71); and §§ 91.1 and 91.90 of part 91 of the Federal Aviation Regulations (14 CFR part 91).

The standard configuration of a TCA consists of three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles, respectively. The vertical limits of the TCA are 12,500 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration proposed herein is the result of an extensive staff study conducted by the local FAA regional office after obtaining public input from informal airspace meetings and coordinating with the FAA regional office. The FAA has determined that the proposed alteration of airspace for the Chicago TCA is consistent with TCA objectives. The proposed alteration considers the present terminal area flight operations and terrain as follows:

1. The upper limit of the Chicago TCA is proposed to be raised to 10,000 feet

MSL. The TCA concept is to provide the greatest level of safety for the greatest number of people in the congested airspace surrounding large terminal hubs. This is accomplished by providing ATC with an increased capability to provide separation within that airspace by ensuring that all aircraft are subject to specific operating rules and pilot and equipment requirements. The present 7,000 feet MSL upper limit of the Chicago TCA does not afford adequate assurance that aircraft transitioning from the en route structure to the terminal structure will be provided that level of separation service and safety at altitudes between 7,000 feet MSL and 10,000 feet MSL. Raising the upper limit of the Chicago TCA to 10,000 feet MSL would ensure that aircraft transitioning to/from the congested terminal environment are provided adequate ATC service throughout this critical phase of flight.

2. Area A is proposed to be adjusted by reducing the lateral limits from 6.5 nautical miles to 6 nautical miles. Additionally, the 5-nautical mile radius "cutout" of Area A would be increased from the 070° radial to the 090° radial of the Chicago O'Hare very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC). The proposed adjustments would provide additional airspace at Palwaukee Airport which is located 8 miles north of Chicago O'Hare Airport.

3. Area B is proposed to be adjusted by reducing the lateral limits from 10.5 nautical miles to 10 nautical miles. The proposed adjustment would give Schaumburg Air Park more usable non-TCA airspace.

Additionally, the altitude of the floor of the TCA in the northwest corner of Area B would be raised from 1,900 feet MSL to 2,500 feet MSL. This area would be labeled and described as Area G. Raising the altitude of the TCA floor in this area would allow more airspace for VFR operations west of Palwaukee Airport.

4. Area D is proposed to be adjusted by eliminating the 20-nautical mile radius cutout located in the southern section, incorporating that airspace within the lateral and vertical limits of the 25-nautical mile radius. The proposed adjustment would provide additional TCA airspace which would allow for a better level of safety for aircraft arriving and departing the Chicago Midway Airport.

Furthermore, the altitude of the floor of the TCA in the western section of Area D would be raised from 3,600 feet MSL to 4,000 feet MSL. This area would be labeled and described as Area F. Raising the altitude of the TCA floor in

this area would allow for more non-TCA airspace to accommodate uncontrolled VFR operations at Du Page Airport.

The preceding summary of the proposed alteration of the TCA airspace identifies that airspace which is necessary to contain large turbojet aircraft operations at airports within the Chicago TCA. ATC will provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is required for aircraft operations within that airspace. Modifying this TCA would greatly enhance the safety of flight within the congested airspace overlying the Chicago metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Section 71.401 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6F dated January 2, 1990.

Regulatory Evaluation Summary

This section summarizes the full regulatory evaluation prepared by the FAA that provides detailed estimates of the economic consequences of this proposed regulatory action. This summary and the full evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, Federal, state and local governments, as well as anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of \$100 million or more, a major increase in consumer costs, a significant adverse effect on competition, or is highly controversial.

The FAA has determined that this proposal is not "major" as defined in the executive order. Therefore, a full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document termed a regulatory evaluation that analyzes only this proposal without identifying alternatives. In addition to a summary of the regulatory evaluation, this section also contains an initial regulatory flexibility determination, required by the 1980 Regulatory Flexibility Act (Pub. L.

96-354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he/she should consult the full regulatory evaluation contained in the docket.

The primary objective of this proposed rule is to enhance aviation safety by modifying the Chicago, IL, TCA. This proposed rule would modify the Chicago TCA by raising the ceiling, extending the southern lateral boundaries, and redefining several existing subareas within the present TCA configuration.

Cost-Benefits Analysis

a. Costs

The FAA believes that there would be no costs to the agency associated with implementation of this proposed rule. However, some GA aircraft operators may incur minimal costs as a result of circumnavigation. The basis of this assessment for each of these groups is discussed below.

In terms of the FAA, this proposed rule would not impose any additional administrative costs for either personnel or equipment. The additional operations workload generated by this proposed rule would be absorbed by current personnel and equipment resources which are already in place at the Chicago TCA.

In terms of aircraft operators, this proposed rule would impose no costs for avionics equipment on any category of user, and it would impose no costs on aircraft operators who operate under IFR. Aircraft operators who routinely operate under IFR conditions primarily consist of large air carriers, business jets, commuters, and air taxis. The proposed rule would, however, potentially impact aircraft operators who routinely operate under VFR. Those aircraft operators who routinely operate under VFR conditions primarily consist of small GA airplane (single-engine, piston) operators and other GA aircraft operators, such as glider pilots, balloonists, sport parachutists and student pilots.

Under this proposed rule, the TCA ceiling would be raised from 7,000 feet MSL to 10,000 feet MSL. Since GA aircraft operators, such as glider pilots, balloonists, and sport parachutists, do not operate directly above the TCA ceiling of 7,000 feet MSL, they are not expected to incur adverse impacts from expansion of the TCA ceiling. On rare occasions small GA airplane operators (such as single-engine, piston types) do operate under VFR directly above the TCA ceiling of 7,000 feet MSL; however, this activity is infrequent because of the

intense activity within the Chicago TCA. Such operators are not expected to incur adverse impacts because they would be allowed to enter the TCA, provided they request and receive clearance from ATC. This situation should not present a problem for either ATC or affected small GA airplane operators. These operators are already equipped with transponders with automatic altitude reporting capability (Mode C) and they communicate regularly with ATC when operating under VFR directly above the subject airspace of 7,000 feet MSL. The focus of potential cost impacts falls on the proposed expansion of the TCA lateral limits.

This proposed rule would expand a portion of existing Area D of the Chicago TCA. This action would be accomplished by eliminating the 20-nautical mile radius cutout located in the southern section and incorporating that airspace within the lateral and vertical limits of the 25-nautical mile radius. This segment of the TCA airspace would have a floor of 3,600 feet MSL. General aviation glider pilots (or sailplane operators) represent the only group of airspace users who routinely operate in the vicinity of this expanded area of the TCA. Thus, the FAA estimates that only this group of GA aircraft operators would be potentially impacted by this proposed rule. As long as glider pilots operate beneath the floor of 3,600 feet MSL, they would not be impacted by the proposed rule. However, if the glider pilots wish to fly at an altitude higher than 3,600 feet MSL, they would have to circumnavigate an additional 5 nautical miles to the south. Because of this relatively short distance, the FAA estimates that this proposed rule would have a minimal cost impact on glider operations. The FAA recognizes that this estimation of cost impacts on such operators employs some uncertainty. Because of this uncertainty, the FAA solicits comments from the aviation community on the extent to which glider pilots would be impacted by this proposed rule. Since the proposed contraction of the Chicago TCA existing Areas A, B, and a portion of D (floor in western section) would result in more airspace to airspace users, no cost impacts are anticipated.

b. Benefits

This proposed rule is expected to generate benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced casualty losses (namely, aviation fatalities and property damages) as the result of a lowered risk

of midair collisions because of increased positive control in airspace that would be added to the Chicago TCA.

The expansion of the Chicago TCA would restrict controlled aircraft operations in the ceiling from 7,000 feet to 10,000 feet MSL and in a portion within the lateral limits of Area D. Due primarily to the proactive nature of this proposed rule, the potential safety benefits are extremely difficult to quantify in monetary terms. Proactive means that the FAA takes action to prevent a safety problem from occurring when the earliest symptoms appear. In this case, the symptom is increased complexity of aircraft operations in the vicinity of the present ceiling and lateral limits of the Chicago TCA. As the result of this increased complexity, the FAA proposes to expand the positive control of airspace in the aforementioned areas of the TCA. Up to now, safety has been maintained in the vicinity of the existing Chicago TCA, in the face of a steady growth in activity, by such measures as procedural and aircraft metering changes. While the FAA believes that these measures would not be adequate indefinitely, they have been successful in the past as evidenced by a record of no midair collisions within the Chicago TCA. Without documented evidence of midair collisions in this TCA, estimating the probability of a potential occurrence in the absence of this proposed rule cannot be determined with a reliable degree of certainty.

Despite this difficulty, the FAA believes there is an incipient safety problem, though not yet critical. In the absence of this proposed rule, the FAA believes that aviation safety in the subject TCA would be significantly reduced and could lead to potentially catastrophic consequences.

This proposed rule would also accrue benefits in the form of providing more airspace to airspace users who routinely operate under VFR conditions. This is a result of contractions in existing Areas A, B, and a portion of D.

In Area A, the lateral limits would be reduced from 6.5 to 6 nautical miles. Additionally, the 5-nautical mile radius cutout of Area A would be increased from the 070° radial to the 090° radial of the Chicago O'Hare very high frequency omnidirectional radio range and tactical air navigational aid. This action would provide additional unrestricted airspace at Palwaukee Airport which is located 8 nautical miles north of Chicago O'Hare Airport.

In Area B, the lateral limits would be reduced from 10.5 to 10 nautical miles. This action would give Schaumburg Air Park more usable airspace for

uncontrolled VFR operations. An increase in the altitude of the TCA floor in this area from 1,900 feet MSL to 2,500 feet MSL would allow more airspace for VFR operations west of Palwaukee Airport. The altitude of the proposed modified floor of 2,500 feet MSL is labeled and described as Area G.

In Area D (western section), the altitude of the TCA floor would be raised from 3,600 feet MSL to 4,000 feet MSL. The altitude of the proposed modified floor is labeled and described as Area F. An increase in the altitude of the TCA floor in this area would allow for more airspace to accommodate VFR operations at Du Page Airport.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities." The small entities which could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft.

Only those unscheduled aircraft operators without the capability to operate under IFR conditions would be potentially impacted by this proposed rule. The FAA believes that all of the potentially impacted unscheduled aircraft operators are already equipped to operate under IFR conditions. This is because such operators fly regularly into airports where radar approach control services have been established. Therefore, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would neither impose costs on aircraft operators nor on U.S. or foreign aircraft manufacturers.

Federalism Implications

This proposed regulation would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation

of a Federalism assessment is not warranted.

Conclusion

In view of the estimated negligible costs to some GA glider pilots, coupled with benefits in the forms of enhanced aviation safety and increased airspace to GA aircraft operators, the FAA believes the rule is cost-beneficial. For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.401(b) [Amended]

2. Section 71.401(b) is amended as follows:

Chicago, IL [Revised]

Primary Airport

Boundaries. Based on the Chicago O'Hare VORTAC (ORD) (lat. 41°59'18" N., long. 87°51'17" W.) arcs, DME distances, and radials.

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within an area bounded by a line beginning at lat. 42°04'14" N., long. 87°54'58" W.; thence clockwise along the 5-mile DME arc of the Chicago O'Hare VORTAC to lat. 41°59'15" N., long. 87°47'35" W.; to lat. 41°59'15" N., long. 87°46'15" W.; thence clockwise along the 6-mile DME arc of the Chicago O'Hare VORTAC to lat. 41°56'15" N., long. 88°01'15" W.; to lat. 42°01'59" N., long. 88°01'28" W.; thence clockwise along the 6-mile DME arc of the Chicago O'Hare VORTAC to lat. 42°05'12" N., long. 87°55'25" W.; to the point of beginning.

Area B. That airspace extending upward from 1,900 feet MSL to and including 10,000

feet MSL bounded by a line beginning at lat. 42°04'06" N., long. 87°52'34" W.; thence clockwise along the 5-mile DME arc of the Chicago O'Hare VORTAC to lat. 41°59'15" N., long. 87°47'35" W.; to lat. 41°59'15" N., long. 87°46'15" W.; thence clockwise along the 6-mile DME arc of the Chicago O'Hare VORTAC to lat. 41°56'15" N., long. 88°01'15" W.; to lat. 42°01'59" N., long. 88°01'28" W.; thence clockwise along the 6-mile DME arc of the Chicago O'Hare VORTAC to lat. 42°05'12" N., long. 87°55'25" W.; to lat. 42°09'00" N., long. 87°57'22" W.; thence counterclockwise along the 10-mile DME arc of the Chicago O'Hare VORTAC to lat. 42°05'00" N., long. 87°43'18" W.; to lat. 42°05'00" N., long. 87°51'34" W.; to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within the 15-mile DME radius of the Chicago O'Hare VORTAC, excluding that airspace designated as Area A, Area B, Area E, and Area G.

Area D. That airspace extending upward from 3,600 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 42°07'52" N., long. 88°10'47" W.; to lat. 42°15'40" N., long. 88°19'38" W.; thence clockwise along the 25-mile DME arc of the Chicago O'Hare VORTAC to lat. 41°42'03" N., long. 88°18'33" W.; to lat. 41°49'53" N., long. 88°09'58" W.; thence counterclockwise along the 15-mile DME arc of the Chicago O'Hare VORTAC to the point of beginning.

Area E. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 42°05'00" N., long. 87°43'18" W.; to lat. 42°05'00" N., long. 87°51'34" W.; to lat. 42°08'08" N., long. 87°48'06" W.; thence clockwise along the 10-mile DME arc of the Chicago O'Hare VORTAC to the point of beginning.

Area F. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 42°07'52" N., long. 88°10'47" W.; to lat. 42°15'40" N., long. 88°19'38" W.; thence counterclockwise along the 25-mile DME arc of the Chicago O'Hare VORTAC to lat. 42°13'18" N., long. 88°22'05" W.; to lat. 42°08'17" N., long. 88°18'15" W.; thence counterclockwise along the 20-mile DME arc of the Chicago O'Hare VORTAC to lat. 41°49'40" N., long. 88°17'48" W.; to lat. 41°45'42" N., long. 88°22'24" W.; thence counterclockwise along the 25-mile DME arc of the Chicago O'Hare VORTAC to lat. 41°42'03" N., long. 88°18'33" W.; to lat. 41°49'53" N., long. 88°09'58" W.; thence clockwise along the 15-mile DME arc of the Chicago O'Hare VORTAC to the point of beginning.

Area G. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at lat. 42°05'12" N., long. 87°55'25" W.; to lat. 42°09'00" N., long. 87°57'22" W.; thence counterclockwise along the 10-mile DME arc of the Chicago O'Hare VORTAC to lat. 42°08'21" N., long. 87°59'54" W.; to lat. 42°04'36" N., long. 87°57'59" W.; thence clockwise along the 6-mile DME arc of the

Chicago O'Hare VORTAC to the point of beginning.

Issued in Washington, DC., on March 28, 1990.

Jerry W. Ball,

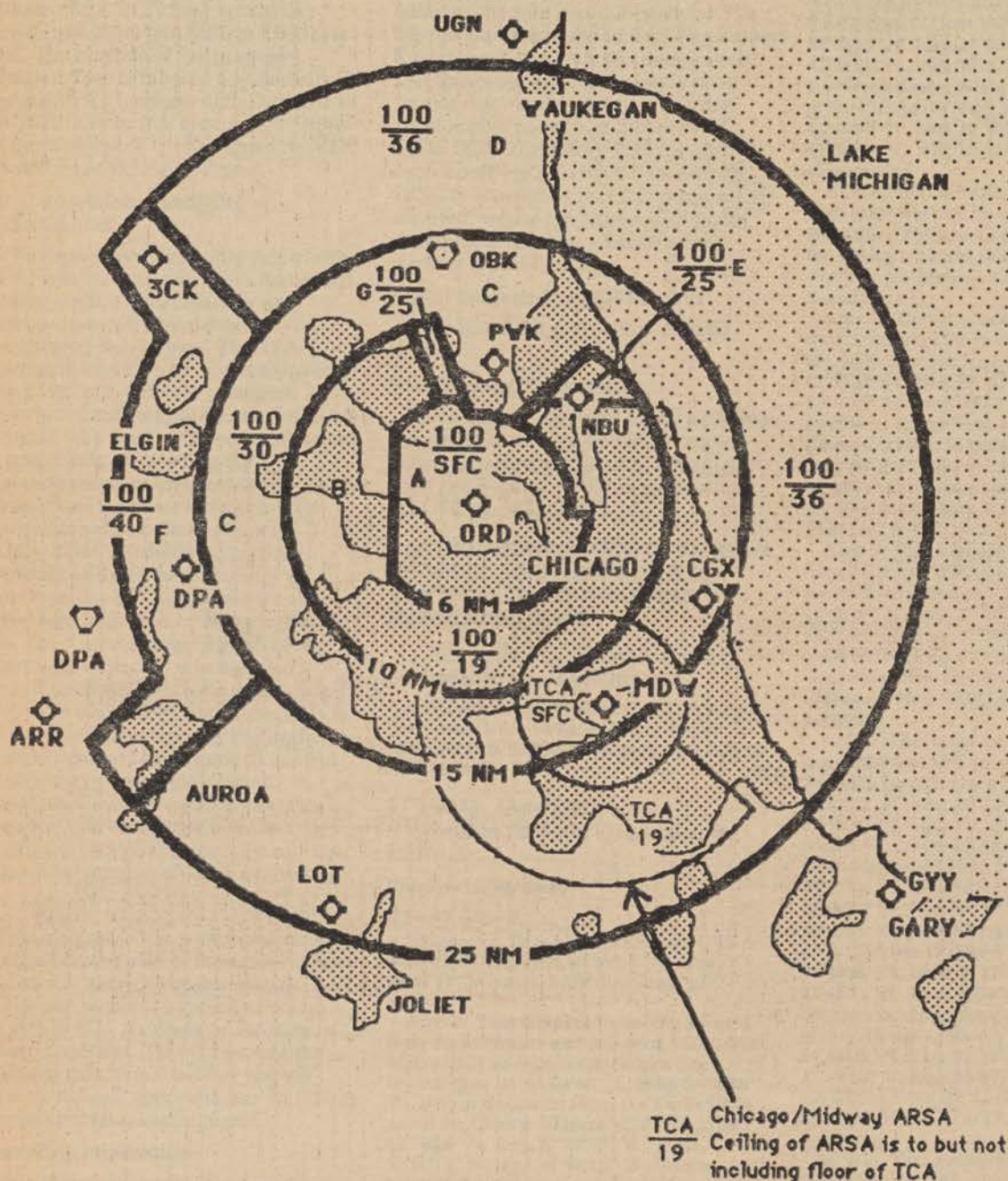
Acting Manager, Airspace-Rules and
Aeronautical Information Division.

BILLING CODE 4910-13-M



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Chicago Office
A10-229

CHICAGO/O'HARE TERMINAL CONTROL AREA (NOT TO BE USED FOR NAVIGATION)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Section
ATO-259

[FR Doc. 90-7953 Filed 4-5-90; 8:45 am]

BILLING CODE 4910-13-C

Department of Health and Human Services

Friday
April 6, 1990

Part V

**Department of
Health and Human
Services**

Office of Community Services

**Availability of Funds and Request for
Applications Under the Fiscal Year 1990
Emergency Services and Shelter AFDC
Transitional Housing Demonstration;
Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS-90-5]

Availability of Funds and Request for Applications Under the Office of Community Services' Fiscal Year 1990 Emergency Services and Shelter AFDC Transitional Housing Demonstration

AGENCY: Office of Community Services, FSA, HHS.

ACTION: Notice of availability of funds and request for Applications under the Office of Community Services' Emergency Services and Shelter AFDC Transitional Housing Demonstration Program.

SUMMARY: The Office of Community Services (OCS) announces that competing applications will be accepted for demonstration project grants pursuant to the Secretary's authority under section 903 of the Stewart B. McKinney Homeless Assistance Amendments Act (McKinney Act) of 1988 (Pub. L. 100-628).

DATES: The closing date for submission of applications is July 5, 1990.

ADDRESSES: Applications may be mailed to: U.S. Department of Health and Human Services, Family Support Administration, Office of Grants Management, 6th Floor OFM/DCM, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand-delivered applications are accepted during normal working hours of 8 to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: U.S. Department of Health and Human Services, Family Support Administration, Office of Grants Management, 6th Floor East, 901 "D" Street SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Joseph R. Carroll, U.S. Department of Health and Human Services, Office of Community Services, Homeless Grant Programs, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 252-4803 or 252-5325.

SUPPLEMENTARY INFORMATION: This Program Announcement consists of seven parts:

Part A covers information on legislative authorities and background, and defines terms used in the Program Announcement;

Part B defines who is eligible to apply, lists the program purposes and related requirements for the grants that will be made, and describes the types of projects that will be considered for funding;

Part C provides details on application prerequisites, funds available, limitation on grant amounts, project periods, who should

benefit from the programs, and other application requirements;

Part D describes the application procedures, including the availability of forms, where and how to submit an application, the criteria used in screening and evaluating applications, and compliance with Federal requirements regarding the drug-free workplace and debarment requirements in submitting the application;

Part E describes the contents of the application package and receipt process;

Part F provides instructions for completing the SF-424 following standard Federal guidelines as well as OCS specific requirements, and describes how the project narrative should be ordered and presented; and

Part G details post-award information and reporting requirements.

Part A—Authority, Background, and Definitions

1. Legislative Authority

Section 903 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628) authorizes the Secretary to make funds totalling \$20 million available to at least two but no more than three States, to undertake and carry out demonstration projects that provide housing in transitional facilities instead of in commercial or similar transient facilities for homeless families who are recipients of Aid to Families with Dependent Children under a State plan approved under part A of title IV of the Social Security Act. These commercial transient facilities are often known as "welfare hotels".

2. Background Information

The demand for shelter for the homeless continues to grow, and one of the fastest growing segments of the homeless population appears to be families, especially single-parent families.

Many communities that lack sufficient family shelters or other housing for homeless families will house such families in hotels/motels or similar commercial transient facilities until they can place the families in more permanent housing. While the stay in these commercial facilities is intended to be brief, some families have stayed in these "welfare hotels" for months or years at a time. In many cases, a family of 3-4 or more members is housed in one room, with no cooking or eating facilities. Some of the commercial facilities require that the families leave during the day with all their belongings, and no counseling or other supportive services are provided. In many cases, the children living in these "welfare hotels" do not attend school. Such facilities are inappropriate for housing

families. Often, the communities have paid exorbitant rates, sometimes in excess of \$3,000 per month in large cities, for these welfare hotel rooms.

The urgent needs of mothers and their children who live in commercial or similar transient facilities have prompted many communities to develop transitional housing as part of their long-term efforts to promote independent living opportunities for these families. Transitional facilities generally try to bridge the gap between homelessness and permanent housing by providing support services and interim residence, with the intent of preparing families to move into permanent housing. The length of stay for families in transitional facilities ranges from a few months to a few years.

The FY 1990 appropriations act for the Departments of Labor, Health and Human Services, and Education, and Related Agencies (Pub. L. 101-166) appropriated \$20 million to HHS to carry out this demonstration program on a one-time basis. The President's proposed budget for FY 1991 requests that these needs be addressed through existing programs in the Department of Housing and Urban Development (HUD). This program is a one-time demonstration limited to \$20 million for 2-3 States. For this reason, we will give priority consideration to those applications that provide for additional or subsequent year funding from sources other than OCS, in order to continue the projects when Federal funds are exhausted.

Applicants will be required to maintain their current level of efforts to help the homeless, so that these Federal funds will be used to expand assistance to the homeless, rather than simply replacing State or other funds already dedicated to helping the homeless.

This demonstration will be conducted within a broader context of ongoing and planned initiatives to assist low-income families, including those that are or might become homeless. The Department is pursuing a broad range of new activities and initiatives to assist low-income families in general and homeless families in particular. In January 1990, a Memorandum of Understanding was signed between the Secretary of Housing and Urban Development (HUD) and the Secretary of Health and Human Services (HHS). One of the goals of the memorandum was to encourage better coordination of housing and services for homeless families with children. The Department intends, in part, that this McKinney Act demonstration program will promote improved coordination of housing

assistance and support services for families at the community level.

3. Definition of Terms As In Statute

For purposes of this Program Announcement the following definitions apply:

a. **Homeless Family**—The term *homeless family* means a dependent child or children and the relatives with whom such child or children are living, who—

(1) Lack a fixed and regular nighttime address;

(2) Have a primary residence that is a shelter designed for temporary accommodation, a hotel, or a motel; or

(3) Are living in a place not designed for, or ordinarily used as, a regular sleeping accommodation.

b. **Commercial or Similar Transient Facilities**—The term *commercial or similar transient facilities* means transient accommodations in—

(1) A commercial hotel or motel operated by a privately owned for-profit entity; or

(2) A similar establishment which is not a transitional facility (whether or not directly operated or contracted for by the State or a political subdivision or by a not-for-profit organization authorized by the State or political subdivision to provide such accommodations).

c. **Transitional Facility**—The term *transitional facility* means any facility operated by a State or local government or nonprofit organization which, at a minimum—

(1) Provides temporary and private sleeping accommodations, and temporary eating and cooking accommodations; and

(2) Provides services to help families locate and retain permanent housing.

Part B. Purpose, Eligibility, and Requirements

1. Purpose

The purpose of this program is to enable States to undertake a limited number of demonstration projects that will illustrate various methodologies and approaches for providing transitional housing to homeless families who are recipients of the Aid to Families with Dependent Children (AFDC) Program, and are currently living in welfare hotels or similar types of commercial transient facilities. Based on a review of past efforts using "welfare hotels" to house homeless families, it is expected that the demonstrations will show whether it is less expensive and more effective to move homeless AFDC families out of "welfare hotels" and into transitional

housing. One of the desired outcomes of these demonstrations would be evidence showing whether transitional housing is or is not more economical than "welfare hotels" in the long run. Another desired outcome is to show whether support services offered in transitional housing locations are more effective in achieving self-sufficiency than those services offered in "welfare hotel" settings.

2. Eligible Applicants

States are the only eligible applicants for demonstration grants under this program. States may use public or private non-profit agencies, or a combination of such organizations, to conduct the demonstration projects.

3. General Program Requirements

Applicants should be aware that projects funded under this grant must become operational (actually placing families in transitional housing) in a reasonable time frame. Extra consideration will be given to projects that can quickly become operational.

There is no requirement for the applicant to provide matching funds for this program. However, this effort is a one-time endeavor funded through OCS. Accordingly, strong consideration will be given to applications that include provision for follow-up funding or some other form of project support, from a source other than OCS. This could include cash or third party in-kind contributions.

In addition, applicants will be required to show that they are maintaining their current level of efforts to help the homeless, so that these funds will be used to expand existing homeless assistance activities, rather than simply to replace State or other funds already dedicated to helping the homeless.

In evaluating applications, favorable consideration will be given to applicants who show linkages to other providers of services to the homeless, and to housing assistance programs and other activities for which AFDC families and their members may be eligible.

Projects must have a measurable and potentially major impact on the housing of homeless families, should be applicable to other localities with similar problems, and have the potential for widespread replication by other entities. An independent third-party evaluation of the project must be conducted by the applicant.

Projects funded under this announcement must be conducted on a scale broad enough to permit a valid evaluation.

4. Specific Application Requirements

The application should provide for the involvement of and/or partnership or coordination with the State housing agency, State coordinator of homeless assistance programs, and other appropriate State agencies. In addition, in order to qualify for a grant under this program, the State agency that administers the Aid to Families with Dependent Children program under a State plan approved under part A of title IV of the Social Security Act, must demonstrate that the proposed project will satisfy the following requirements:

a. Provide housing in transitional facilities only to homeless families who are recipients of Aid to Families with Dependent Children under the State plan and who reside in commercial or similar transient facilities;

b. Permanently reduce the number of rooms used to house homeless families who are recipients of such aid in commercial or similar transient facilities by the number of units made available in transitional facilities in accordance with paragraph (1); and

c. Provide that the Federal share of the total amount of cash assistance provided under the project to families residing in transitional facilities plus the total amount of grants made to the State under this section must be less than or equal to the Federal share of the cost of the cost of housing such families in commercial or similar transient facilities (including payments made to cover basic needs and services of such families).

Requirement 1. Provision of Transitional Housing for Homeless AFDC Families

This area covers the conduct of a demonstration project that provides for the movement of homeless AFDC families, who are currently living in commercial or similar type transient facilities (so called "welfare hotels"), to transitional facilities.

Each State that receives funds under this section shall use such funds to—

a. Rehabilitate or construct transitional facilities which are easily convertible to permanent housing when such facilities are no longer needed as transitional facilities; and

b. Provide on-site social services at such facilities.

Under the provisions of the McKinney Act, project funds may not be used to acquire or lease transitional housing sites. States that wish to use existing facilities may provide them as part of a cash or third party in-kind contribution.

Because of statutory limitations, the project funds also may not be used for

operating costs of the transitional housing sites. For this reason, the application must include an explanation of the source of operating funds. This could include charging rent to the residents, or dedicating State or other funds to this expense.

Social services provided in facilities in close geographic proximity to the transitional housing site will be considered to be "on-site" services. Applicants should discuss the geographic location of such services in their application. Pertinent social services could include such things as case management, family and budget counselling, job training, education, day care, medical services, and transportation. Special consideration will be given to applications that provide comprehensive social services and those services such as job training and education that are designed to promote self-sufficiency of the family and placement in and retention of permanent housing.

It is expected that families assisted by this project will stay no longer than two years in transitional housing before being placed in permanent housing.

Requirement 2. Permanent Reduction in Number of Commercial Type Rooms Used for Housing Homeless AFDC Families

As part of this requirement, as families are relocated from commercial or similar transient facilities to transitional housing, we expect to see an equal reduction in the number of commercial type units or rooms utilized to house homeless AFDC families by the State. Such a reduction in use of commercial type facilities should be demonstrably permanent, and be reconcilable with the number of families being placed in transitional living facilities. It is expected that documentation of this requirement would provide, for example: (1) Historical background of the local housing situation; (2) highlights of previous projects regarding housing homeless families in the State; and (3) projections on what the proposed project will accomplish for homeless AFDC families.

Requirement 3. Containment of Federal Costs Used for Housing Homeless AFDC Families

In this area we are seeking evidence that the Federal share of the total amount of cash assistance provided under the project to families residing in transitional facilities plus the total amount of grants made to the States under this section will be less than or equal to the Federal share of the cost of

housing such families in commercial or similar transient facilities (including payments made to cover basic needs and services of such families).

A cost comparison for the project period should be available that compares what is currently expended to house and provide support services and assistance to AFDC families residing in commercial or similar transient facilities, to what is proposed for housing and servicing such families in transitional housing for the project period.

Part C—Application Prerequisites

1. Eligible Applicants

Eligibility is restricted to the individual States. States may use public or private nonprofit agencies to accomplish these demonstration projects.

2. Availability of Funds

a. FY 1990 Funds

OCS expects to award no more than \$20,000,000 over a period of 3½ years, beginning with Fiscal Year 1990 for demonstration projects to at least 2 but not more than 3 States.

b. Grant Amounts

No more than three State demonstration projects will be funded. Preliminary project funding levels will not be established. Funds will be distributed among the projects based on the merits of the individual proposals, and in consideration of the special interests listed in Part B.

3. Project and Budget Period

OCS will accept proposals for demonstration projects with a duration period of up to 42 months (3½ years). Any construction or rehabilitation activities must be completed within 18 months. Social services must be provided for at least 24 months. As part of the application, applicants must provide an estimate of the project's cash flow needs for the entire project period. Funds will be released to the grantees as needed for each fiscal year covered by the project period. Release of funds in subsequent fiscal years will depend upon satisfactory performance by the grantee in the previous fiscal year(s).

4. Mobilization of Resources

OCS will give favorable consideration in the review process to applicants who document public/private partnerships which mobilize cash and/or third party in-kind contributions (See part D, Criterion VII.)

5. Program Beneficiaries

Projects proposed for funding under this announcement must result in direct benefits to homeless families who are recipients of Aid to Families with Dependent Children under a State plan approved under part A of title IV of the Social Security Act.

6. Multiple Submittal

There is no limit to the number of separate applications that can be submitted by each State. However, since only 2 or 3 States will be approved for funding, it is expected that only one application from any of the States will be funded. States that wish to provide transitional housing in more than one site for homeless AFDC families living in "welfare hotels" should submit one combined application discussing details of each of the proposed housing sites. Favorable consideration will be given to such applications, especially if they include a comparison of different approaches to providing transitional housing or use of the same approach in different settings.

Part D—Application Procedures

1. Availability of Forms

The attachments contain all of the standard forms necessary to apply for awards under this program. These forms may be photocopied for the application.

Copies of the *Federal Register* containing this announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources, they may be obtained by writing or telephoning the office listed under the section entitled "FOR FURTHER INFORMATION" at the beginning of the announcement.

For purposes of this announcement, all applicants will use forms SF-424, SF-424A, and SF-424B. Applications proposing construction projects will also present all required financial data using SF-424A. Instructions for completing the SF-424, SF-424A, and SF-424B can be found in attachments A, B, C, and part F.

Part F contains instructions for the project narrative. The project narrative will be submitted on plain bond paper along with the SF-424 and related forms.

Attachment G provides a checklist to aid applicants in preparing a complete application package.

The application will consist of:

- Standard Form 424, "Application for Federal Assistance" (SF-424);
- "Budget Information—Non-Construction Programs" (SF-424A);
- "Assurances—Non-Construction Programs" (SF-424B); and

d. the Project Narrative.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace and debarment regulations set forth in attachments D and E.

2. Application Submission

Applications must be submitted by the closing date. Refer to "DATES" at the beginning of this document for the specific date.

Applications may be mailed to: U.S. Department of Health and Human Services, Family Support Administration, Office of Grants Management, 6th Floor OFM/DGM, 370 L'Enfant Promenade, SW., Washington, DC 20447.

Hand-delivered applications are accepted during normal working hours of 8 to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: U.S. Department of Health and Human Services, Family Support Administration, Office of Grants Management, 6th Floor East, 901 "D" Street, SW., Washington, DC 20447.

An application will be considered to be received on time if sent on or before the closing date as evidenced by a legible U.S. Postal Service postmark or a legibly dated receipt from a commercial carrier. Private metered postmarks will not be considered acceptable as proof of timely mailing. Applications submitted by any means other than through the U.S. Postal Service or commercial carrier shall be considered as acceptable only if physically received at the above address before close of business on or before the deadline date.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office.

Late applications will be returned to the senders without consideration in the competition.

Applications once submitted are considered final and no additional materials will be accepted by OCS.

One signed original application and four copies are required. The first page of the SF-424 must contain in the lower right-hand corner the letters "HD".

3. Application Consideration

Applications which meet the screening requirements in sections 4 a. and b. below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program requirements and evaluation criteria

published in this announcement. Applications submitted under this provision will be reviewed by persons outside of the OCS unit which will be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since other factors are taken into consideration, including: Comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on previous OCS or other Federal agency grants.

OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record. The statute authorizing the homeless demonstration projects requires the Department to provide a copy of each application to the Comptroller General (i.e., the U.S. General Accounting Office, GAO) for review. The Comptroller General will review such applications and report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, on whether the Federal share of financial assistance (including cash assistance and State grants) necessary under each project application is less than or equal to the Federal share of housing such families in commercial or similar transient facilities (including payments for basic needs and services).

4. Criteria for Screening Applicants

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a Standard Form 424 "Application for Federal Assistance" (SF-424), a budget (SF-424A), and signed "Assurances" (SF-424B) completed according to

instructions published in part F and attachments A, B, and C of this Program Announcement.

(2) A project narrative must also accompany the standard forms.

(3) The SF-424 and the SF-424B must be signed by the governor or his/her designee.

(4) The application must contain a demonstration by the State agency that administers the Aid to Families with Dependent Children program in the State under part A of title IV of the Social Security Act, that the proposed project will satisfy all requirements identified in part B, Specific Application Requirements.

b. Pre-Rating Review

Applications which pass the initial screening will be forwarded to reviewers and/or OCS staff prior to the programmatic review to verify that the applications comply with this Program Announcement in the following areas:

(1) **Eligibility:** Applicant meets the eligibility requirements identified in this announcement.

(2) **Project Design:** The application contains a project which responds to the requirements cited in this announcement.

(3) **Target Populations:** The application clearly targets the specific outcomes and benefits of the project to homeless AFDC families living in commercial transient facilities.

(4) **Program Focus:** The application addresses the purposes described in part B of this announcement.

(5) **Requirements:** An application will be disqualified from the competition and returned to the sender if it does not conform to one or more of the above requirements.

c. Evaluation Criteria

Applications which pass the pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained in part B.

Note: The following review criteria reiterate collection of information requirements contained in part F of this announcement. These requirements are approved under OMB Control Number 0970-0062.

(1) Criteria for Review and Evaluation of All Applications

(a) *Criterion I: Analysis of Need* (Applicable to Requirements 1, 2, and 3) (Maximum: 5 points).

The application documents that the project addresses a vital housing need that meets the requirements of this demonstration program, and provides statistics and other data and information in support of its contention.

(b) *Criterion II: Organizational Experience in Program Area and Staff Responsibilities* (Applicable to Requirements 1, 2, and 3) (Maximum: 5 points).

(i) *Organizational Experience in Program Area* (sub-rating: 0-2 points)

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided transitional or permanent housing to homeless families.

States have detailed competence in the specific program area and expertise in the fields of housing and supportive services. If applicable, information provided by the States also addresses related achievements and competence of each organization that would participate in the project.

The subgrantee and/or contractor has demonstrated the ability to implement major activities in such areas as development of transitional housing; provision of supportive social services; the ability to mobilize dollars from sources such as the private sector (corporations, banks, etc.), foundations, the public sector, including State and local governments, or individuals; that it has a sound organizational structure and proven organizational capability; and an ability to develop and maintain a stable program that will provide needed transitional housing and services in the community to homeless families.

(ii) *Staff Skills, Resources, and Responsibilities* (sub-rating: 3 points)

The application describes in brief resume form the experience and skills of the Project Director who is well qualified and his/her professional capabilities that are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the Project Director are relevant to the successful implementation of the project. The State and its partners have adequate facilities and resources (i.e. space and equipment) to successfully carry out the project. The assigned

responsibilities of the staff are appropriate to the tasks identified for the project, and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

(c) *Criterion III: Program Implementation* (Applicable to Requirements 1, 2, and 3) (Maximum: 15 points)

The application contains a detailed and specific work plan that is both sound and feasible. The project is responsive to the needs identified in the Analysis of Need. It sets forth realistic quarterly time targets by which the various work tasks will be completed. Critical issues or potential problems that might impact negatively on the project are defined, and the project objectives can be reasonably attained despite such potential problems. Extra consideration will be given to those projects that can become quickly operational (i.e., actually placing homeless AFDC families in transitional housing). The work plan demonstrates that the applicant will maintain its current level of effort to help the homeless, and that these demonstration grant funds will be used to expand assistance to the homeless and not simply used to replace State or other funds already dedicated to homeless assistance efforts. The project should be applicable to other localities with similar problems, and have the potential for widespread replication by other entities.

(d) *Criterion IV: Significant and Beneficial Impact* (Applicable to Requirement 1) (Maximum: 20 points)

(i) *Provision of Transitional Housing* (sub-rating: 0-10 points)

The application contains a full and accurate description of the proposed use of the requested financial assistance. The proposed project will produce permanent, measurable, and potentially major results that will develop transitional housing for homeless AFDC families, rather than relying on commercial or similar type facilities for long-term housing. The transitional housing is easily convertible to permanent housing when such facilities are no longer needed as transitional facilities. Project activities should, where possible, be combined with other private and/or public efforts related to housing homeless families. The project should be designed to move families from the transitional housing project to permanent housing within a two-year period.

Note: More points will be given to those applicants demonstrating that their monthly costs per housing unit, (including any acquisition/construction/rehabilitation/

leasing costs amortized over a reasonable period of time, plus operating expenses, but without considering the provision of social services) are no greater than prevailing market rents within the community for similar type housing units. Higher cost-per-unit estimates will receive correspondingly fewer points.

(ii) *Provision of Social Services* (sub-rating: 0-10 points)

The proposed project will provide useful on-site comprehensive social services to residents of the transitional housing. Extra consideration will be given to those applications that provide services designed to make the family self-supporting and that are designed to enable them to move into and retain permanent housing.

(e) *Criterion V: Reduction in Use of Transient and Commercial Facilities* (Applicable to Requirement 2) (Maximum: 15 points)

The application contains a full and accurate description of how the proposed demonstration will reduce the number of commercial type units or rooms utilized to house homeless AFDC families.

Results are quantifiable in terms of the number of units of housing rehabilitated or constructed, and number of commercial or transient facilities no longer utilized. The collection of housing statistics is reflected in the application. The grant funds, in combination with private and/or other public resources, are targeted to permanently reduce the number of commercial and transient facilities used to house homeless AFDC families.

(f) *Criterion VI: Containment of Federal Costs* (Applicable to Requirement 3) (Maximum: 15 points)

The application documents cost comparisons for the various housing arrangements and supports services provided, so that a clear identification of total costs can be achieved. The collection of such cost data is reflected in the application.

(g) *Criterion VII: Public/Private Partnerships* (Applicable to Requirements 1, 2, and 3) (Maximum: 10 points)

The application documents that the applicant, where possible, will supplement demonstration efforts with resources and services from the public and/or private sectors. The documentation should include a dollar estimate for all cash and in-kind contributions, both for the project period and for a three-year period after the end of the project period. The potential for continued support from other sources is

a significant factor in applicant selection.

(h) *Criterion VIII: Budget Appropriateness and Reasonableness* (Applicable to Requirements 1, 2, and 3) (Maximum: 5 points)

Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The application includes a detailed budget break-down for each of the budget categories in the SF-424A. The applicant presents a reasonable administrative cost budget. The estimated cost to the Federal government of the project also is reasonable in relation to the anticipated results, and meets the Federal cost requirements specified in part B4(3).

(i) *Criterion IX: Third-Party Evaluation* (Applicable to Requirements 1, 2, and 3) (Maximum: 10 points)

The proposal includes activities related to and appropriate to the development of a third-party evaluation design and the selection of a contractor to conduct the evaluation.

Part E—Contents of Application and Receipt Process

(Approved by the Office of Management and Budget under Control Number 0970-0062)

1. Contents of Application

Each application submission must include a signed original and four additional copies of the application, which includes:

- A signed "Application for Federal Assistance" (SF-424);
- "Budget Information—Non-Construction Programs" (SF-424A);
- A signed "Assurances—Non-Construction Program" (SF-424B);
- A project narrative, consecutively numbered and preceded by a Table of Contents, that will include all of the following elements according to the project type:

- (1) Organizational History and Management Capability.
- (2) Analysis of Need.
- (3) Project Design and Significant and Beneficial Impact.
- (4) Third-Party Evaluation.
- (5) Partnerships.
- (6) Appendices, including information relevant to participating partners, staff resumes and other material deemed appropriate.

The entire application package should not exceed 50 pages, including all forms and attachments. The first page of the SF-424 must contain in the lower right hand corner the letters "HD".

Applications must be uniform in composition, since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must

be submitted on white 8½ x 11 inch paper only. They must not include colored, oversized, or folded materials. Do not include organizational brochures or other promotional materials, slides, films, clips, etc. in the proposal. They will be discarded if included. Applications submitted in binders must allow for easy separation and reassembly. Include a self-addressed mailing label which can be affixed to a postcard to acknowledge OCS receipt of the application.

2. Acknowledgement of Receipt

All applicants will receive an acknowledgement postcard with an assigned identification number. This number must be referred to in all subsequent communication with OCS concerning the application. If an acknowledgement is not received within three weeks after the deadline date, please notify FSA by telephone at (202) 252-4566.

Part F—Instructions for Completing Applications

(Approved by the Office of Management and Budget under Control Number 0970-0062)

The Standard Forms attached to this announcement shall be used when submitting applications for all funds under this announcement.

It is suggested that you reproduce the SF-424, SF-424A, and SF-424B, and type your application on the copies. If an item on the SF-424 cannot be answered or does not appear to be related or relevant to the assistance requested, write "NA" for "Not Applicable."

Prepare your application in accordance with standard instructions given in attachments A through F as well as the OCS specific instructions set forth below:

1. SF-424—"Application for Federal Assistance"

Item 1. For the purposes of this announcement, all projects are considered "Applications". There are no "Pre-Applications" and no Construction Projects. The "Construction" entry relates to projects where the primary purpose of the grant is construction. This is not the case with these demonstration projects. Their major purpose as indicated in part B is to provide transitional housing to homeless AFDC families. Accordingly, check the "Non-Construction" box.

Items 5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number.

Item 9. Enter "Office of Community Services, Family Support

Administration, Department of Health and Human Services."

Item 10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 13.791. The title is "Emergency Services and Shelter AFDC Transitional Housing Demonstration Program."

2. SF-424A—"Budget Information—Non-Construction Programs"

See Instructions accompanying this form, as well as the instructions set forth below.

In completing these sections, the "Federal Funds" budget entries should separately identify all Federal funds involved in the project, and "Non-Federal" will include mobilized funds from all other sources—applicant and other. For multiple housing site projects, use totals and show breakdown using same column and line headings. In completing this form, include the proposed budget for the entire grant period requested. For proposed project periods exceeding 12 months, prepare an attachment for each 12 month period showing the proposed budget for that period, using the same categories as shown in section B of Form SF-424A.

Sections A and D of SF-424A, if applicable, must contain entries for Federal and non-Federal (mobilized) funds. Section B contains entries for Federal funds only. Section C contains entries for all non-Federal funds. Clearly identified continuation sheets in SF-424A format should be used as necessary.

Section A—Budget Summary

Line 1:

Column (a): Enter "Emergency Services and Shelter AFDC Transitional Housing Demonstration Program";

Column (b): Enter "13.791";

Columns (c) and (d): For purposes of this announcement, columns (c) and (d) should be left blank for all types of applications; and

Columns (e), (f), and (g): Enter in columns (e), (f), and (g) the appropriate amounts for OCS programs covered under this announcement needed to support the project for the budget period.

Lines 2-4:

Enter same information as above for any other Federal funds proposed to be used in the project.

Line 5:

Enter the totals of lines 1-4 for all columns completed—(e), (f), and (g).

Section B—Budget Categories

Allowability of costs are governed by applicable cost principles set forth in subpart C of 45 CFR part 92.

In OCS applications, it is only necessary to complete columns (1) and (5).

Column 1:

Enter the total requirements for Federal funds by the Object Class Categories of this section.

Personnel—Line 6a:

Enter the total costs of salaries and wages. Do not include costs of consultants or personnel costs of delegate agencies to be financed by the applicant.

Fringe Benefits—Line 6b:

Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Travel—Line 6c:

Enter total costs of out-of-town travel by employees of the project. Do not enter costs for consultant's travel or local transportation. Provide justification for requested travel costs. (See line 6h and line 21 for additional instructions.)

Contractual—Line 6f:

Enter the total costs of all contracts.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit sections A and B of this form (SF-424A), completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on line 6f. Provide back-up documentation identifying name of contractors, purpose of contract, and major cost elements.

Construction—Line 6g:

Enter the costs of renovation, repair, or new construction related to housing homeless AFDC families. Provide narrative justification and breakdown of costs.

Indirect Charges—Line 6j:

Enter the total amount of indirect costs.

This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies. Applicants should enclose a copy of the current rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not be also charged as direct costs to the grant.

The total amount shown in section B, column (5), line 6k, should be the same as the amount shown in section A, line 5, column (e).

Program Income—Line 7:

If applicable, enter the estimated amount of income expected to be generated from this project. Separately show expected program income generated from Federal support and other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Column 5:

Carry totals from column 1 to column 5 for all line items.

Section C—Non-Federal Resources

This section is to record the amounts of non-Federal resources that will be used to support the project. Provide a brief explanation on a separate sheet showing the type of contribution and whether it is cash or third-party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the Partnerships criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment from the organizations or individuals from which funds will be received. Show the basis for computation when the contribution is in-kind.

Line 8:

Column (a):
Enter the project title.

Column (b):
Enter the amount of cash contribution to be made by the applicant (i.e., the State).

Column (c):
Should be left blank, since the State contribution is included in column (b).

Column (d):
Enter the amount of cash and third party in-kind contributions to be made from all other sources, including any partners of the State applicant.

Column (e):
Enter the total of columns (b) and (d).

Lines 9 and 10:
Should be left blank.

Line 12:
Carry the total of each column of Line 8, (b) through (e). The amount in column (e) should be equal to the amount on section A, Line 5, column (f).

Section D—Forecasted Cash Needs

Line 13:
Enter the amount of Federal cash needed for this grant, by quarter, during the first year of the budget period.

Line 14:
Enter the amount of cash from all other sources needed, by quarter, during the first year of the budget period.

Line 15:
Enter the total of Lines 13 and 14.

Section E—Budget Estimates of Federal Funds Needed for Balance of the Project

Enter the amount of Federal funds needed in the first and succeeding years of the budget period. First year amounts (in Column b) should equal totals shown in sections A, B, and D, and all funds should be identified by Federal source. Identify the type of funding period utilized—i.e., fiscal or calendar year.

Section F—Other Budget Information

Line 21:
Use this space and continuation sheets as necessary to fully explain and justify the major items included in the budget categories shown in section B. Include

sufficient detail to facilitate determination of allocability, relevance to the project, and cost benefits. Particular attention must be given to the explanation of any requested direct cost budget item which requires explicit approval by the Federal agency. Budget items which require identification and justification shall include, but not be limited to, the following:

- Salary amounts and percentage of time worked for those key individuals who are identified in the project narrative;
- Any out-of-state travel;
- A list of all equipment and estimated cost of each item to be purchased wholly or in part with grant funds which meet the definition of nonexpendable personal property provided on line 6d, section B. Need for equipment must be supported in program narrative;
- Contractual: Major items or groups of smaller items; and
- Other: Group into major categories all other costs such as space, rental, training allowances, staff training, etc. Provide a complete breakdown of all costs that make up this category.

Line 22:

Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the rate agreement if it was negotiated with a Federal agency other than the Department of Health and Human Services.

Line 23:

Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF-424B "Assurances—Non-Construction"

All applicants must sign and return the "Assurances" with the application.

4. Project Narrative

The project narrative should provide information on how the application addresses the purpose of this announcement as set forth in part B. It should also show how the application meets the evaluation criteria in part D, section 4(c) of this Program Announcement and should follow the format below:

a. Analysis of Need

The application should include a description of the target area and population to be served, as well as a discussion of the nature and extent of housing the homeless problem. In addition, an applicant should provide a thorough summary of the results of its research conducted in order to identify

previous and current attempts to address the housing of homeless AFDC families and their related social services problems, and describe the limitations of these attempts. A bibliography of all the sources used in its research must be included as an attachment.

b. Organizational History and Management Capability

Each applicant must document, for itself and any project partners, any past efforts and current capability to address the problem of housing and providing supportive services to the homeless as specified in the application. The applicant should demonstrate that it has (1) experience in developing and operating innovative projects that utilize a variety of resources in a cooperative and problem solving arrangement with other agencies, and (2) experience specifically related to the problem(s) and activities proposed in the application. The applicant should describe its organizational structure, summarize relevant portions of its mission, strategy, and multi-year plan, summarize any examples of recent evaluation research it has conducted, and provide a current listing of all relevant sources of funds and projects operated in the applicant's current funding year. The applicant should demonstrate and document that it has experience in designing and/or managing such projects.

The application must fully describe the experience and skills of the proposed Project Director showing that the individual is well qualified and that his/her professional capabilities are relevant to the successful implementation of the project. It must show clearly that sufficient time of the Director and other senior staff will be budgeted to assure timely implementation and oversight of the project. If the Project Director and/or the person responsible for conducting the evaluation has not yet been identified, include a position description for each of these persons. The applicant should submit for each of the partners any of the above information which is relevant.

c. Project Design and Significant and Beneficial Impact

Each application must include the following in its project design:

- (1) An approach that permits measurement of the extent to which the target population has been helped and evidence of cost efficiency;
- (2) The rationale for the approach being proposed to overcome this problem and explanation showing how the approach proposed by the applicant

is a departure from, or a significant modification of, previous and current approaches, and why the applicant believes that using this approach will lead to positive outcomes;

(3) A description of the target groups including an estimate of the number of participants and their major characteristics that are relevant to project success;

(4) A thorough description of the interventions that will be carried out, with inclusion of target dates, in chronological order, by which the major events will occur;

(5) Inclusion of measurable objectives, intended project outcomes, and intended impact on the problems that are being addressed;

(6) If appropriate, identification of impediments to efficient and economical housing of homeless AFDC families that are caused by legislative, administrative, and regulatory requirements at the Federal, State, and local levels;

(7) A description of the suitability of the housing the applicant is proposing to use or provide for transitional housing. This description should cover the suitability of the units, the building, and the neighborhood for housing homeless AFDC families, including a description of the amenities available in the neighborhood. Demonstrate that the applicant has control of any sites to be used, or show when the applicant will obtain site control. A discussion of any site control or zoning issues that would prevent timely completion of the project should also be included; and

(8) Inclusion of information that shows how the applicant will assure that resources necessary to continue the project will be mobilized, how it will incorporate the project into its existing organizational structure, and how the new activities will result in changes, if any, to current projects. Explain why one or both of the following applies: (a) This demonstration will show how to use existing housing and homeless resources more efficiently; and/or (b) services or activities conducted under this demonstration could be continued after completion of the demonstration project with other than OCS funds.

d. Third-Party Evaluation

A plan for a methodologically sound third-party (i.e. independent) evaluation of the demonstration project must be attached and must:

- (1) Include provisions for both a process evaluation, which includes written policies and procedures as its base, and an outcome evaluation. Include a discussion of the expected methodology to be used in the

evaluation. A reliable research methodology should be used;

(2) Utilizing the definitions contained in part A, examine the various methodologies and approaches employed to place homeless AFDC families in transitional housing instead of in commercial transient facilities (including social services provided), and identify the best practices, at a minimum, from the standpoints of: Effectiveness, cost, and promotion of family self-sufficiency.

(3) Include an adequate sample size and rationale for program participation. This could include the use of comparison groups;

(4) Clearly identify the hypothesis to be tested. Describe the outcomes (such as AFDC benefit amount, income, length of stay in transitional housing, etc.) that will be measured, and the activities that will produce the changes. Describe in detail the methodology which will be used in the evaluation. Provide a description of measurement instruments, performance measures and data collection procedures. Include procedures that will be used to isolate and systematically assess competing explanations for the observed outcomes;

(5) Provide for the preparation of a written report of the evaluation findings that will be submitted to OCS within 120 days of the expiration of the grant period; and

(6) Include a realistic plan for disseminating the project findings, once they have been approved by OCS, to States and other interested parties upon request.

The applicant must include an assurance that the evaluation will be conducted by an independent entity, i.e., an entity organizationally distinct from, and not under the control of, the applicant. Include information on the expected cost of the evaluation in the proposed project budget.

e. Partnerships

As applicable, working agreements should provide for substantive policy and management roles for each of the partners in the conduct of the project. The forging of the partnerships should strengthen the collaborative roles of the partners in the planning, implementation, and evaluation of the project. OCS encourages the development of new collaborative efforts among agencies that link State agencies as well as nontraditional service providers and partners.

Part C—Post-Award Information and Reporting Requirements

Following approval of the applications selected for funding, a notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Notice of Grant Award, which provides the amount of Federal funds approved for use in the project, the total project period for which support is provided, and the terms and conditions of the award.

In addition to the General Conditions

and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR parts 74 and 92. Grantees will be required to submit quarterly progress and financial reports on an SF-269, and final progress and financial reports within sixty days of the termination of the project. An interim progress report, along with the written policies and procedures which served as a basis for the report, will be due 30 days after the first twelve months and a final progress report will be due 90 days after the expiration of the grant. The

independent third-party evaluation of the project will be due 120 days after the expiration of the grant period. These reports will be submitted in accordance with instructions provided by OCS and will be the basis for the dissemination effort to be conducted by the Office of Community Services.

Grantees are subject to the audit requirements in 45 CFR parts 74 and 92.

Dated: March 30, 1990.

Eunice S. Thomas,

Director, Office of Community Services.

BILLING CODE 4150-04-M

Attachment A—SF-424, "Application for Federal Assistance"

OMB Approval No. 0348-0043

APPLICATION FOR
FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		2. DATE SUBMITTED		Applicant Identifier	
Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		3. DATE RECEIVED BY STATE		State Application Identifier	
		4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier	
5. APPLICANT INFORMATION					
Legal Name:			Organizational Unit:		
Address (give city, county, state, and zip code):			Name and telephone number of the person to be contacted on matters involving this application (give area code)		
6. EMPLOYER IDENTIFICATION NUMBER (EIN): [] [] - [] [] [] [] [] [] [] []			7. TYPE OF APPLICANT: (enter appropriate letter in box) <input type="checkbox"/>		
8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):			A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify):		
9. NAME OF FEDERAL AGENCY:					
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: [] [] [] [] [] [] [] [] [] [] TITLE:			11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:		
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):					
13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:			
Start Date	Ending Date	a. Applicant		b. Project	
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?			
a. Federal	\$.00	a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE			
b. Applicant	\$.00	b. NO <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372			
c. State	\$.00	<input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW			
d. Local	\$.00				
e. Other	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?			
f. Program Income	\$.00	<input type="checkbox"/> Yes If "Yes," attach an explanation <input type="checkbox"/> No			
g. TOTAL	\$.00				
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED					
a. Typed Name of Authorized Representative			b. Title		c. Telephone number
d. Signature of Authorized Representative					e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:

Entry:

Item:

Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
 - "New" means a new assistance award.
 - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
 - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Attachment B—SF-424A, "Budget Information—Non-Construction Programs"

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A — BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B — BUDGET CATEGORIES					
Object Class Categories	GRANT PROGRAM FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

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Attachment C—SF-424B, "Assurances—Non-Construction Programs"

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

- Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
- Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
- Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

BILLING CODE 4150-04-C

Attachment D—U.S. Department of Health and Human Services Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR part 76, subpart F. The regulations, published in the January 31, 1989 *Federal Register*, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the U.S. Department of Health and Human Services determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of the grant, or governmentwide suspension or debarment.

A. The grantee certifies that it will provide a drugfree workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Make it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d) (2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through

implementation of paragraphs (a), (b), (c), (d), and (f).

B. The grantee shall insert in the space provided below, the site(s) for the performance of work done in connection with the specific grant (Street address, city, county, state, zip code):

Attachment E—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

This certification is not required for States as applicants for demonstration projects to reduce the number of homeless AFDC families in welfare hotels, but is required for, and applies only to, their principals.

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR part 76, certifies to the best of its knowledge and belief that its principals involved:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements; or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation for this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions", provided below, without modification in all lower tier covered transactions and in all solicitations for lower tier covered actions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusions—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment F—Certification Regarding the Anti-Lobbying Provisions

Restrictions on Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by

section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or grant a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Signature

Title

Organization

Date

BILLING CODE 4150-04-M

DISCLOSURE OF LOBBYING ACTIVITIESApproved by OMB
0348-0046Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known: Congressional District, if known: _____	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known: _____	
6. Federal Department/Agency: _____	7. Federal Program Name/Description: CFDA Number, if applicable: _____	
8. Federal Action Number, if known: _____	9. Award Amount, if known: \$ _____	
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI): _____	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): _____	
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
11. Amount of Payment (check all that apply): \$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned	13. Type of Payment (check all that apply): <input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____	
12. Form of Payment (check all that apply): <input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11: _____		
(attach Continuation Sheet(s) SF-LLL-A, if necessary)		
15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No		
16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**Approved by OMB
0348-0046

Reporting Entity: _____

Page _____ of _____

Attachment G—Listing of Applicable Regulations

The following DHHS regulations apply to all applicants/grantees. Title 45 of the *Code of Federal Regulations*:

- Part 16—Departmental Procedures of the Grant Appeals Board
- Part 74—Administration of Grants (non-governmental)
- Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):
 - Sections 74.62(a) Non-Federal Audits
 - 74.173 Hospitals
 - 74.174(b) Other Nonprofit Organizations
 - 74.304 Final Decisions in Disputes
 - 74.710 Real Property, Equipment and Supplies
 - 74.715 General Program Income
- Part 75—Informal Grant Appeals Procedures
- Part 76—Debarment and Suspension from Eligibility for Financial Assistance
- Subpart F—Drug Free Workplace Requirements
- Part 80—Nondiscrimination
 - Under Programs Receiving Federal Assistance through the Department of Health and Human Services
 - Effectuation of title VI of the Civil Rights Act of 1964
- Part 81—Practice and Procedures for Hearings Under part 80 of this Title

- Part 83—Nondiscrimination on the Basis of Sex in the Admission of Individuals to Training Programs
- Part 84—Nondiscrimination on the Basis of Handicap in Programs
- Part 91—Nondiscrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
- Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments
- Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities.

Attachment H—Checklist for Use in Submitting Emergency Services and Shelter AFDC Transitional Housing Demonstration Program Applications

The application should contain:

1. A completed, *signed* SF-424, "Application for Federal Assistance." The letter code for the Emergency Services and Shelter AFDC Transitional Housing Demonstration Program ("HD") should be in the lower right-hand corner of the page;
2. A completed "Budget Information—Non-Construction" (SF-424A);
3. A *signed* "Assurance—Non-Construction" (SF-424B);
4. A project narrative, consecutively numbered and preceded by a Table of

Contents, that will include all of the following elements according to the project type:

- (i) Organizational History and Management Capability
- (ii) Analysis of Need
- (iii) Project Design and Significant and Beneficial Impact
- (iv) Third-Party Evaluation
- (v) Partnerships
- (vi) Appendices, including information relevant to participating partners, staff resumes and other material deemed appropriate.

5. A *signed* copy of Certification Regarding the Anti-Lobbying Provisions;

6. A completed Disclosure of Lobbying Activities form, if appropriate; and

7. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application.

The application should not exceed a total of 50 pages. It should include one original and four identical copies and be printed on white 8½ by 11 inch paper.

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal guidelines concerning the drug-free workplace and debarment regulations set forth in attachments D and E.

[FR Doc. 90-7911 Filed 4-5-90; 8:45 am]

BILLING CODE 4150-04-M

Department of Energy Federal Register

Friday
April 6, 1990

Part VI

Department of Energy

Compliance With National Environmental Policy Act (NEPA); Amendments to Guidelines; Notice

DEPARTMENT OF ENERGY

Compliance with the National Environmental Policy Act (NEPA); Amendments to DOE's NEPA Guidelines

AGENCY: Department of Energy.

ACTION: Amendments to the Department of Energy's NEPA Guidelines with request for comments.

SUMMARY: The Department of Energy (DOE) proposes to amend section D of its NEPA guidelines by adding to its list of categorical exclusions. A categorical exclusion is a class of actions that do not individually or cumulatively have a significant effect on the human environment and, therefore, normally do not require the preparation of either an environmental impact statement (EIS) or environmental assessment (EA). DOE proposes three additional categorical exclusions that concern: (1) Removal actions under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and actions similar in scope under the Resource Conservation and Recovery Act (RCRA), (2) improvements to environmental control systems to comply with environmental permit conditions, and (3) site characterization and environmental monitoring under CERCLA and RCRA. Public comment is invited on this proposal. DOE will use these categorical exclusions on an interim basis, pending notice of final action on the proposed amendments in the *Federal Register*.

DATES: Comments by May 7, 1990.

ADDRESSES: Send comments to Carol M. Borgstrom at the following address.

FOR FURTHER INFORMATION CONTACT:

Carol M. Borgstrom, Director, Office of NEPA Project Assistance, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 3E-080, Washington, DC 20585, (202) 586-4600.

William J. Dennison, Esq., Acting Assistant General Counsel for Environment, U.S. Department of Energy, 1000 Independence Avenue, SW., Room 6A-113, Washington, DC 20585, (202) 586-6947.

SUPPLEMENTARY INFORMATION:

A. Background

On March 28, 1980, DOE originally published (45 FR 20694) guidelines¹ for

implementing the procedural provisions of NEPA as required by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508). In accordance with these regulations, section D of the DOE guidelines lists three classes of agency actions: (1) Those that normally require an EIS, (2) those that normally require an EA but not necessarily an EIS, and (3) those that normally do not require either an EA or an EIS.

Identification of this third class of actions, termed "categorical exclusions," was required by § 1507.3(b)(2)(ii) of the CEQ regulations. Section 1508.4 of the CEQ regulations defines a categorical exclusion as a "category of actions which do not individually or cumulatively have a significant effect on the human environment * * * and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." The CEQ regulations permit agency discretion, in that "[a]n agency may decide in its procedures or otherwise, to prepare environmental assessments * * * even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect." *Id.*

The DOE NEPA guidelines state that "DOE may add actions to or remove actions from the categories in section D based on experience gained during the implementation of the CEQ regulations and these guidelines." The last amendments to Section D were published on March 27, 1989 (54 FR 12474). Before that, amendments were published on December 15, 1987 (52 FR 47662), concurrently with republication of DOE's NEPA guidelines in their entirety. Under the DOE guidelines, substantive revisions are to be published in the *Federal Register* and adopted only after opportunity for public review (52 FR 47667).

The amendments below concern categorical exclusions for certain actions under CERCLA or RCRA. However, it is the policy of DOE, where DOE remedial actions under CERCLA trigger the procedures set forth in NEPA, to integrate the procedural and documentation requirements of CERCLA and NEPA, wherever practical. The primary instrument for this integration will be the Remedial Investigation/Feasibility Study (RI/FS) process, which will be supplemented, as needed, to meet the procedural and documentation requirements of NEPA. In addition, the public review processes of CERCLA and NEPA will be combined for RI/FS-

NEPA documents, where appropriate. DOE also intends to establish, for cases where DOE corrective actions under RCRA trigger the procedures set forth in NEPA, a policy to integrate the procedural and documentation requirements of RCRA and NEPA, wherever practical.

B. Amendments

DOE proposes to amend Section D of its guidelines further by adding three categorical exclusions. The first categorical exclusion proposed is for removal actions under CERCLA (including those taken as final response actions and those taken before remedial action) and for actions similar in scope under RCRA (including those taken as partial closure actions and those taken before corrective action).

DOE proposes to limit this categorical exclusion to those actions that: (1) Are implemented clearly in accordance with applicable statutory and regulatory requirements and permits, (2) do not involve construction or expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating surface water and groundwater), and (3) affect only areas previously determined not to be environmentally sensitive areas. Sensitive areas include archeological sites, critical habitats, floodplains, wetlands, and sole source aquifers. The proposed categorical exclusion includes examples of covered actions (such as capping or other containment of contaminated soils or sludges; stabilization of berms, dikes, impoundments, or caps; and closing of surface impoundments).

DOE uses the following CERCLA terms in this categorical exclusion: CERCLA section 101(23) defines "remove" or "removal" to mean the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. CERCLA section 101(24) defines "remedy" or "remedial action" to mean those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that

¹ Pursuant to a recent decision by the Secretary of Energy, the DOE NEPA guidelines will be revised shortly and published for public comment as proposed regulations.

they do not migrate to cause substantial danger to present or future public health or welfare or the environment. CERCLA section 101(25) defines "respond" or "response" to mean remove, removal, remedy, and remedial action.

In proposing to categorically exclude certain RCRA actions that are similar in scope to CERCLA removal actions, DOE uses the term "partial closure" as defined in 40 CFR 260.10 and "corrective action" as referred to in sections 3004 (u) and (v), 3008(h), and 9001-9010 of RCRA.

This categorical exclusion is proposed because DOE believes that CERCLA removal actions and actions similar in scope under RCRA that are limited as described above do not have the potential for significant effects on the human environment. DOE intends to apply the categorical exclusion regardless of time or cost to implement the actions. DOE's presumption that these actions have no potential for significant environmental impact and therefore do not require preparation of an EA or EIS is independent of the extent of documentation or public review that may be provided under CERCLA or RCRA.

The second categorical exclusion DOE proposes is for improvements to environmental control systems (e.g., changes to scrubbers in air quality control systems or ion-exchange devices in water treatment systems) that reduce the amount or concentration of regulated substances in air emissions or water effluents in order to comply with environmental permit conditions. DOE proposes that this categorical exclusion apply only if: (1) the improvements will be conducted within an existing facility, (2) any substance captured or produced thereby during subsequent operations of the facility will be disposed of or otherwise released through existing facilities and clearly in accordance with applicable statutory and regulatory requirements and permits, or these substances will be recycled through existing permitted facilities, and (3) for any such substance identified within the definition of hazardous substances under section 101(14) of CERCLA, there are applicable statutory or regulatory requirements or permits for its disposal, release or recycling.

The third categorical exclusion DOE proposes is for site characterization and environmental monitoring activities (including the installation of field monitoring stations) under CERCLA or RCRA. This categorical exclusion would only apply to activities that: (1) Will not introduce or spread substances identified within the definition of hazardous substances under section

101(14) of CERCLA, pollutants or contaminants as defined by section 101(33) of CERCLA, or non-native organisms; and (2) will affect only areas previously determined not to be environmentally sensitive areas. Sensitive areas include archeological sites, critical habitats, floodplains, wetlands, and sole-source aquifers.

DOE proposes the categorical exclusions for improvements to environmental control systems and for CERCLA and RCRA site characterization and environmental monitoring activities because DOE believes that, under the conditions proposed for use of the categorical exclusions, the actions do not have the potential for significant effects on the human environment.

Categorically excluding certain classes of actions from environmental analysis under NEPA only creates a rebuttable presumption that any such actions will not significantly affect the quality of the human environment. For those circumstances where DOE has reason to believe that a significant impact could arise from categorically excluded actions, DOE's NEPA guidelines provide that individual proposed actions will be reviewed to determine the appropriate level of NEPA documentation.

DOE has consulted with CEQ regarding these proposed amendments in accordance with 40 CFR 1507.3. DOE has addressed CEQ's comments, and CEQ has no objection to publication of this Notice.

Comments concerning the proposed amendments to section D of the DOE NEPA guidelines should be submitted to Carol M. Borgstrom at the address given above.

Pending notice of final action on the proposed categorical exclusions in the *Federal Register*, the DOE will use the categorical exclusions set forth below on an interim basis.

Issued in Washington, DC, on April 2, 1990.
Peter N. Brush,
*Acting Assistant Secretary, Environment,
Safety and Health.*

The DOE NEPA Guidelines are hereby amended by adding the following at the end of section D:

Classes of Actions Generally Applicable to All of DOE Normally Do Not Require EAs or EISs

1. Removal actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (including those taken as final response actions and those taken before remedial action) and for actions similar in scope under the Resource

Conservation and Recovery Act (RCRA) (including those taken as partial closure actions and those taken before corrective action), where the actions: (1) Are implemented clearly in accordance with applicable statutory and regulatory requirements and permits, (2) do not involve construction or expansion of waste disposal, recovery, or treatment facilities (including incinerators and facilities for treating surface water and groundwater), and (3) affect only areas previously determined not to be environmentally sensitive areas. Sensitive areas include archeological sites, critical habitats, floodplains, wetlands, and sole source aquifers.

These removal and similar actions could include, but are not limited to, the following types of actions:

- Excavation or consolidation of contaminated soils or materials from drainage channels or retention basins;
- Removal of drums, barrels, tanks, or other bulk containers that contain or may contain substances identified within the definition of hazardous substances under section 101(14) of CERCLA or pollutants or contaminants as defined by section 101(33) of CERCLA;
- Removal of asbestos-containing materials from existing buildings in accordance with 40 CFR part 61 (National Emission Standards for Hazardous Air Pollutants), subpart M (National Emission Standard for Asbestos); 40 CFR part 763 (Asbestos), subpart G (Asbestos Abatement Projects); 29 CFR part 1910, subpart I (Personal Protective Equipment), part 1910.134 (Respiratory Protection); subpart Z (Toxic and Hazardous Substances), part 1910.1001 (Asbestos, tremolite, anthophyllite, and actinolite); and 29 CFR part 1926 (Safety and Health Regulations for Construction), subpart D (Occupational Health and Environmental Controls), part 1926.58 (Asbestos, tremolite, anthophyllite, and actinolite).
- Removal of polychlorinated biphenyl (PCB) items, such as transformers or capacitors, PCB-containing oils flushed from transformers, PCB-flushing solutions, and PCB-containing spill materials from buildings or other above-ground locations in accordance with 40 CFR part 761 (Polychlorinated Biphenyls Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions);
- Storage of wastes in Department of Transportation approved containers or at storage facilities in compliance with RCRA pending treatment (including incineration), recovery, or disposal;

- Treatment (including incineration), recovery, or disposal of wastes at existing permitted facilities for which, if they are Federal facilities, appropriate NEPA review has been completed;

- Repair or replacement of leaking containers;

- Capping or other containment of contaminated soils or sludges;

- Closing of man-made surface impoundments;

- In-situ stabilization using conventional, widely-used technologies (e.g., grouting with cement) where consistent with existing long-term land-use management plans for which appropriate NEPA review has been completed;

- Confinement or perimeter protection using dikes, trenches, ditches, or diversions;

- Stabilization of berms, dikes, impoundments, or caps;

- Drainage controls;

- Segregation of reactive wastes;

- Use of chemicals and other materials to neutralize wastes;

- Installation and operation of gas ventilation systems in soil to remove

methane or other potentially explosive gases;

- Installation of fences, warning signs, or other security or site control precautions;

- Provision of an alternative water supply that does not involve new water sources.

2. Improvements to environmental control systems (e.g., changes to scrubbers in air quality control systems or ion-exchange devices in water treatment systems) that reduce the amounts or concentrations of regulated substances in air emissions or water effluents in order to comply with environmental permit conditions, where: (1) The improvements will be conducted within an existing facility, (2) any substance captured or produced thereby during subsequent operations of the facility will be disposed of or otherwise released through existing facilities and clearly in accordance with applicable statutory and regulatory requirements and permits, or these substances will be recycled through existing permitted facilities, and (3) for any such substance identified within the definition of

hazardous substances under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act, there are applicable statutory or regulatory requirements or permits for its disposal, release, or recycling.

3. Site characterization and environmental monitoring activities (including the installation of field monitoring stations) under the Comprehensive Response, Compensation and Liability Act (CERCLA) or Resource Conservation and Recovery Act, where the activities: (1) will not introduce or spread substances identified within the definition of hazardous substances under section 101(14) of CERCLA, pollutants or contaminants as defined by section 101(33) of CERCLA, or non-native organisms; and (2) will affect only areas previously determined not to be environmentally sensitive areas. Sensitive areas include archeological sites, critical habitats, floodplains, wetlands, and sole-source aquifers. [FR Doc. 90-8023 Filed 9-5-90; 8:45 am]

BILLING CODE 6450-01-M

Environmental Protection Agency

Friday
April 6, 1990

Part VII

Environmental Protection Agency

**Hazardous and Solid Waste; Conditional
Variance to Department of Energy Waste
Isolation Pilot Plant; Notice of Proposed
Decision**

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3753-3]

Notice Proposing to Grant a Conditional Variance to the Department of Energy Waste Isolation Pilot Plant (WIPP) From Land Disposal Restrictions

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed decision.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing to grant a conditional no-migration variance to the U.S. Department of Energy (DOE). This variance would allow DOE to place hazardous waste subject to the land disposal restrictions of the Resource Conservation and Recovery Act (RCRA) in DOE's Waste Isolation Pilot Plant (WIPP) near Carlsbad, NM, for the limited purposes of testing and experimentation. DOE submitted a petition to EPA under 40 CFR 268.6 requesting a no-migration variance from the RCRA land disposal treatment standards on the grounds that treatment was unnecessary to protect human health and the environment because there would be no migration of hazardous constituents from the disposal unit. After a review of DOE's petition and supporting information, EPA has tentatively concluded that DOE has demonstrated, to a reasonable degree of certainty, that hazardous constituents will not migrate out of the WIPP disposal unit during the testing period proposed by DOE.

DATES: Comments on this proposed decision should be submitted on or before June 5, 1990.

EPA notes that it is providing the public a 60-day comment period on this proposed decision, which is longer than it generally provides for site-specific actions. For example, the Agency allows 30 days for comments on proposed no-migration variance decisions for underground injection wells, and 45 days for comments on RCRA permits. The Agency has provided extended time for comment on today's proposal because of the scope of the record, and because it is the Agency's first proposed decision on a variance request under 40 CFR 268.6. EPA, however, considers the extended comment period sufficient, and does not intend to grant any further extensions to the period.

Comments on today's proposal should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (OS-305), 401 M Street, SW., Washington, DC

20460. One original and two copies should be sent and identified by regulatory docket reference number F-90-NMWP-FFFFF. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Docket materials may be reviewed by appointment by calling (202) 475-9327. Copies of docket materials may be made at no cost, with a maximum of 100 pages of material from any one regulatory docket. Additional copies are \$0.15 per page.

A copy of the record supporting this proposal is also available to the public in Albuquerque, New Mexico, at the National Atomic Museum Library, Building 20358, Wyoming Boulevard, Kirkland Air Force Base, from 9 a.m. to 5 p.m., Monday through Friday; and in Carlsbad, New Mexico, at the WIPP Office and Information Center, 101 W. Greene Street, from 7:30 a.m. to 4:30 p.m.

Public hearings on this proposed decision have been scheduled for May 22, 1990, in Carlsbad, New Mexico, at the Park Inn International, 3706 National Parks Highway, beginning at 9:00 a.m., and for May 23 to 26, 1990, in Albuquerque, New Mexico, at the Albuquerque Convention Center, 401 Second St. NW. The hearing on May 23 in Albuquerque will begin at 1:00 p.m.; the hearing on subsequent days will begin at 9 a.m. Persons interested in testifying at either hearing should telephone 1-800-955-9477 to register. Requests to testify must be received by May 11, 1990.

FOR FURTHER INFORMATION CONTACT: General questions about the regulatory requirements under RCRA should be directed to the RCRA/Superfund Hotline, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, Washington, DC 20460, 800-424-9346 (toll free) or 202-382-3000 (local).

Specific questions about the issues discussed in this notice should be directed to Matthew Hale, Office of Solid Waste (OS-341), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, at 202-382-4746.

SUPPLEMENTARY INFORMATION:

I. Background

A. RCRA Land Disposal Restrictions: No-Migration Variances

The Hazardous and Solid Waste Amendments (HSWA) of 1984, which amend the Resource Conservation and Recovery Act (RCRA), imposed substantial new requirements on the land disposal of hazardous waste. In particular, the amendments prohibit the continued land disposal of hazardous wastes, unless the wastes meet the

treatment standards specified by EPA. "Land disposal" is defined to include placement "in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave" (RCRA section 3004(k)).

The statute requires EPA to establish treatment standards for wastes subject to the land disposal restrictions; these standards define when a hazardous waste may be land disposed. In its implementing regulations, EPA has established these standards based on the best demonstrated available technology (BDAT). The HSWA amendments also lay out specific dates by which the land disposal restrictions become effective, beginning with November 8, 1986, for solvents and dioxins. By May 8, 1990, restrictions will be in effect for all wastes that were listed or identified as hazardous before November 8, 1984, although EPA may extend the land disposal prohibition dates for up to two years if it finds a lack of national treatment capacity. EPA may also grant a 1-year case-by-case capacity extension, which can be extended once, in certain circumstances. Once the land disposal prohibition date for a specific waste has passed, that waste cannot be placed in a land disposal unit, unless it has been treated to meet or otherwise meets BDAT standards, or "unless the Administrator determines that the prohibition * * * is not required in order to protect human health and the environment for as long as the waste remains hazardous * * * (RCRA sections 3004 (d)(1), (e)(1), and (g)(5)). This determination must be based on a demonstration by the facility owner/operator "that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous." (RCRA sections 3004 (d)(1), (e)(1), and (g)(5)). A determination under this authority is referred to as a "no-migration" variance; a request from a facility owner/operator for such a variance is called a "no-migration" variance petition.

The Agency first promulgated no-migration standards under 40 CFR 268.6 on November 7, 1986. These regulations, which apply to land disposal units other than underground injection wells, codify the statutory standard for no-migration variances, specify information to be included in variance petitions, and establish procedures for the granting or denying of a variance (November 7,

1986, 51 FR 40572).¹ EPA amended the regulations on August 17, 1988 (53 FR 31138), to add further procedural requirements and standards. EPA is now developing additional no-migration standards, including a generic definition of "no-migration," for land disposal units other than underground injection wells. The Agency expects to propose these standards in the near future. In conjunction with this proposal, EPA has also developed draft no-migration variance petition guidance, a copy of which is available in the docket for this rulemaking.

The current standards and procedures for no-migration variances (for units other than injection wells) are laid out in 40 CFR 268.6. Under this section, persons seeking a no-migration variance must submit a petition to the EPA Administrator "demonstrating, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous." Petitions must identify the waste and the specific unit that is the subject of the petition; provide waste analysis; characterize the unit, including background conditions; provide monitoring to confirm that no migration has occurred after the disposal has begun; and demonstrate compliance with other federal, state, and local laws.

Under 40 CFR 268.6, the Administrator must publish a tentative decision to grant or deny a no-migration variance for public comment in the *Federal Register*. EPA is required to publish final decisions in the *Federal Register*, after considering and responding to public comments. Variances may be valid for up to 10 years, but for no longer than the term of the facility permit. (Variances, however, may be reissued after their term has expired.) If petitions are granted, facility owners/operators must report changes in operating conditions from those described in the petition and notify EPA if hazardous constituents are detected migrating from the unit. If migration is detected, further disposal of wastes subject to the petition is suspended.

To date, EPA has received 24 no-migration variance petitions submitted in accordance with 40 CFR 268.6. Today's notice, which addresses disposal of mixed radioactive and hazardous waste in a mined salt bed, is the Agency's first proposed decision on any of these petitions. The other

petitions submitted under § 268.6 primarily address land treatment operations. They are currently under Agency review. In addition, EPA has received approximately 65 no-migration petitions under 40 CFR part 148 for underground injection wells. Of these petitions, one has been granted final approval, several have been granted preliminary approval, and certain others have been withdrawn.

B. Regulatory Status of Mixed Wastes

The hazardous wastes that are subject to today's notice are "mixed wastes." Mixed wastes are defined as a mixture of hazardous wastes regulated under Subtitle C of RCRA and radioactive wastes regulated under the Atomic Energy Act (AEA). Because section 1004 of RCRA excludes "source," "special nuclear," or "byproduct material," as defined by the Atomic Energy Act from the definition of RCRA "solid waste," there has been some confusion in the past as to the scope of EPA's authority over mixed wastes under RCRA. EPA clarified this question in a *Federal Register* notice on July 3, 1986. EPA's clarification stated that the Section 1004 exclusion applies only to the radioactive portion of mixed waste, not to the hazardous constituents. Therefore, a mixture of "source," "special nuclear," or "byproduct materials," and a RCRA hazardous waste must be managed as a hazardous waste, subject to the requirements of RCRA subtitle C (that is, RCRA standards for management of hazardous waste). EPA's oversight under RCRA, however, extends only to the hazardous components of the mixed waste, not to the radionuclides themselves; the radionuclides (and any risks they may pose) are instead addressed under the AEA. DOE subsequently confirmed and clarified this interpretation in an interpretive rule, published in the *Federal Register* on May 1, 1987.

EPA's July 3, 1986 interpretation went into effect immediately in states not authorized to administer the RCRA hazardous waste program—that is, in the ten states and territories where EPA directly regulates hazardous wastes under federal RCRA regulations. At the same time, the July 3, 1986 notice informed authorized states that they are required to apply for and receive authorization from EPA to regulate mixed waste under RCRA. Until an authorized state has received mixed waste authorization, mixed waste is not considered to be hazardous under federal RCRA regulations in that state. To date, fourteen states or territories have obtained authority to regulate mixed waste under the state RCRA

hazardous waste program, bringing the total to twenty-four states and territories where mixed wastes are subject to the RCRA hazardous waste requirements.

Mixed wastes, like other hazardous wastes, are subject to the land disposal restrictions. Treatment standards for mixed wastes containing solvents and dioxins—which are generally based on levels achieved through incineration—went into effect on November 8, 1986, and November 8, 1988. Disposal prohibitions for mixed wastes containing "California list" wastes went into effect on July 8, 1987. The remaining mixed wastes (for example, mixed wastes exhibiting a toxicity characteristic) are included in the "third thirds" category; the effective date of the land disposal restrictions for wastes in this category is May 8, 1990. In a recent proposal, however, EPA proposed a two-year national capacity variance for mixed wastes falling into the third thirds (54 FR 48492, November 22, 1989). If this variance is retained in the final regulation, the effective date of land disposal restrictions for these wastes would be extended until May 8, 1992.

It should be noted that the facility addressed in today's proposal is located in New Mexico, a state that has not yet been authorized for mixed waste. EPA recently proposed to grant the state mixed waste authorization (55 FR 10076, March 19, 1990), and expects a final decision on this question in the near future. Until the state has been authorized for mixed waste, however, mixed waste is not a RCRA hazardous waste in the State of New Mexico and the Federal land disposal restrictions do not apply to it.

C. WIPP Project

1. Introduction

In March 1989, the Department of Energy (DOE) submitted a no-migration variance petition for its Waste Isolation Pilot Plant (WIPP), a program to dispose of mixed transuranic (TRU) radioactive and hazardous waste in a mined salt bed near Carlsbad, New Mexico. DOE has designed the WIPP as a permanent repository for TRU wastes that are generated and stored at ten DOE sites around the country.² These wastes,

² The DOE facilities that would send wastes to the WIPP are Idaho National Engineering Laboratory, Idaho Falls, Idaho; Rocky Flats Plant, Golden, Colorado; Los Alamos National Laboratory, Los Alamos, New Mexico; Argonne National Laboratory, Argonne, Illinois; Savannah River Plant, Aiken, South Carolina; Oak Ridge National Laboratory, Oak Ridge, Tennessee; Hanford Reservation, Richland, Washington; Mound Plant,

Continued

¹ On July 26, 1988, the Agency also promulgated standards under 40 CFR 148 for no-migration variances for underground injection wells (53 FR 28122).

which result from the production of nuclear weapons, consist of a variety of materials, including tools, equipment, protective clothing, and other material contaminated during the production and reprocessing of plutonium; contaminated organic and inorganic sludges; contaminated process and laboratory wastes; and contaminated items from decontamination and decommissioning activities at DOE installations.

Wastes emplaced in the WIPP will be limited to transuranic (TRU) wastes, a specific category of radioactive wastes. TRU wastes are defined as wastes contaminated with alpha-emitting radionuclides with atomic numbers greater than 92 (that is, heavier than uranium) in concentrations of greater than 100 nanocuries per gram of waste. In addition, TRU wastes by definition have half-lives of greater than 20 years, although the actual half-lives of radionuclides in waste to be placed in the WIPP are often hundreds or thousands of years. Two types of TRU wastes are targeted for the WIPP: (1) Contact-handled (CH) wastes, which have a measured radiation dose rate at the container surface of 200 millirems per hour and can be safely handled without special equipment when drummed; and (2) remote-handled (RH) wastes, which have a measured radiation dose rate at the container surface of above 200 millirems per hour and must be heavily shielded with lead for safe handling. The upper limit for radiation dose rate of RH wastes to be placed in the WIPP is 1,000 rems per hour. The great majority (97%) of the wastes that will be shipped to the WIPP will be contact-handled. TRU wastes are distinguished from high-level radioactive waste, such as used reactor fuel, and low-level radioactive waste. Other treatment and disposal strategies are being developed for high-level and low-level wastes.

A significant portion of the waste destined for the WIPP (up to 60%, according to current DOE estimates) is contaminated with RCRA hazardous waste, making this waste a "mixed waste" potentially subject to RCRA jurisdiction, although the concentration of hazardous constituents in these wastes is generally very low. The hazardous wastes in question are primarily solvents and EP toxic metals, especially lead. Of these wastes, the solvents are currently subject to treatment standards under the land disposal restrictions, and the EP toxic metals will be subject by May 1990 (or

May 1992 at the latest). DOE intends, at this time, to dispose of these wastes in the WIPP without treating them in conformance with BDAT standards.³ As a result, DOE has applied for a no-migration variance for the mixed wastes to be emplaced in the WIPP.

2. History of the WIPP Project

The effort to locate a permanent disposal site for TRU waste began over 30 years ago, when the National Academy of Sciences recommended that radioactive waste be permanently disposed of in salt beds. After a decade of experimentation, and the rejection of one site for technical reasons, the Atomic Energy Commission, the Oak Ridge National Laboratory (ORNL), and the U.S. Geological Survey (USGS) began a formal selection process for a site in 1973. A set of selection criteria addressing factors such as stratigraphy, hydrogeology, seismicity, population density, and land ownership, were defined, and the USGS reviewed most of the larger rock-salt deposits in the United States against these criteria. On the basis of this review, USGS selected eastern New Mexico as the area best satisfying the site-selection criteria. After further review against detailed, site-specific criteria (e.g., minimum distances were set from the Capitan reef aquifer, existing boreholes, and dissolution fronts), the WIPP site was chosen in 1975.

The WIPP project was authorized by Congress in the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980. DOE began construction of the repository in the early 1980s. Construction of the surface buildings, the underground experimental rooms, and the first underground disposal rooms is now essentially complete.

3. Description of WIPP

The WIPP repository is an underground mine, located approximately 2,150 feet below the surface in the Salado Formation—a 2,000-foot-thick salt bed that extends laterally for approximately 36,000 square miles. The land in the area of the WIPP is owned by the Federal government and administered by the Bureau of Land Management. The four-mile by four-mile plot of land overlying the repository has been temporarily withdrawn from public use by the

³ Since the no-migration petition was first submitted, DOE has formed an Engineering Alternatives Task Force that, among other things, will consider treatment alternatives for TRU wastes before they are disposed of at the WIPP.

Department of Interior; it is now under the control of DOE. The repository is designed to hold TRU wastes that are currently stored at the ten DOE generating facilities, as well as new TRU wastes that will be generated over the next 25 years. If the WIPP site is eventually determined to be a permanent repository, the underground waste disposal area of the WIPP will cover 100 acres, with a total design capacity of 6.45 million cubic feet (or approximately 850,000 barrels of waste). To date, 15 acres of underground disposal rooms have been mined.

Although DOE has conducted extensive studies of the WIPP site and the repository's performance, uncertainties remain. For example, concerns have been raised over the possibility that gas generated underground at the WIPP will, over the long term, build up to unacceptable pressures, leading to possible releases from the repository. To address this and other questions, DOE plans to conduct testing over a 5-year period. This period will involve in-situ tests with actual TRU wastes underground, as well as other investigations. Under DOE's current plans, the in-situ tests would initially involve wastes amounting to approximately 0.5% of the total repository capacity. From these tests, DOE expects to demonstrate compliance with EPA's standards for disposal of radioactive materials (40 CFR part 191 subpart B) and long-term no-migration of RCRA hazardous constituents, as well as to identify any engineering modifications that may be necessary to meet these standards.

DOE is also considering the need for an "operations demonstration" during the 5-year test period. The purpose of this demonstration, which might involve up to an additional 3 to 8% of the total WIPP capacity, would be to show DOE's operational readiness to ship waste to the WIPP and to place it underground.

If DOE is unable to meet EPA hazardous and radioactive waste disposal standards at the conclusion of the test period, it has committed to remove all wastes from the WIPP.

If the WIPP proves acceptable as a permanent repository, DOE will then begin full-scale disposal of waste at the site. Drums, metal boxes, and canisters of waste will be shipped to the WIPP from the generating sites and placed in the underground rooms. Under current plans, the wastes will be backfilled with crushed salt and the rooms sealed. After an operating period of approximately 25 years, DOE plans to seal the shafts of the mine with cement and clay plugs and compacted salt, and decommission

Miamisburg, Ohio; Lawrence Livermore National Laboratory, Livermore, California; and Nevada Test Site, Mercury, Nevada.

the facility. After decommissioning, the salt of the Salado Formation will creep inward on the waste and is expected to encapsulate the waste within 60 to 200 years.

Access to the WIPP site will be restricted during operations and decommissioning, and possibly for longer periods. The Department of Interior temporarily withdrew the lands on the WIPP site from public use in 1983, allowing DOE to begin construction of the facility. Before DOE can place waste at the site, however, either Congress or the Department of Interior must take new land withdrawal action. In addition, DOE and the State of New Mexico have agreed to prohibit in perpetuity all subsurface mining, drilling, and resource exploration unrelated to the WIPP project at the WIPP site. The Federal government has acquired, or is in the process of acquiring, the entire surface and subsurface estate at the WIPP site, including leasehold interests in subsurface resources. Finally, to prevent drilling in the vicinity of the repository in the distant future, DOE intends to place permanent warning markers at the site.

D. Regulatory Status of the WIPP

The WIPP is located in the State of New Mexico, which is expected to receive authorization for mixed waste in the near future. (See 55 FR 10076, March 19, 1990.) Once mixed waste becomes subject to the RCRA hazardous waste regulations in New Mexico, the WIPP will be eligible for RCRA interim status. Facilities "in existence" (which includes those under construction) at the time a waste is identified as hazardous may obtain interim status by submitting a Part A permit application to EPA or the appropriate state. If DOE submits the appropriate application to New Mexico and secures interim status, it will be legally authorized to receive mixed waste—subject, of course, to the land disposal restrictions. The WIPP must also comply with interim status standards, codified at 40 CFR part 265, and obtain a RCRA permit under 40 CFR parts 264 and 270.

The interim status requirements of part 265 establish general facility standards. For example, the WIPP will be required under these standards to have a waste analysis plan for its mixed waste, a contingency plan describing procedures that DOE will take in the case of an emergency, and a closure plan describing how the facility will be closed. At the same time, DOE will be required to submit a RCRA Part B permit application to the State of New Mexico

no later than six months after a request by the state.

The RCRA permit for the WIPP, which would be issued by New Mexico, would establish detailed operating, closure, and post-closure conditions for the facility in accordance with 40 CFR subpart X. (As a geological repository, the WIPP is regulated under the RCRA category of subpart X "miscellaneous units.") The permit's scope would potentially extend to all facility activities related to mixed waste. In this respect, the permit is significantly broader than the no-migration variance, which addresses the specific issue of whether hazardous constituents will migrate from the WIPP disposal unit. At the same time, the permit provides an opportunity to ensure that DOE manages the facility in a way that ensures that migration will not occur.

As discussed earlier, EPA's authority under RCRA over waste destined for the WIPP extends only to mixed hazardous and radioactive waste, and it is further limited to the hazardous components of the mixed waste. The potential release of radioactive material from the WIPP is addressed under the Atomic Energy Act (AEA). EPA has promulgated standards under the AEA limiting releases associated with the disposal of radioactive wastes. These standards, which are codified at 40 CFR part 191, consist of two parts: Subpart A dealing with releases during the operational phase of a permanent disposal facility, and subpart B, dealing with long-term releases after decommissioning. Under an agreement with the State of New Mexico, DOE will comply with the Subpart A standards, beginning with the initial receipt of waste at the WIPP, before the facility has been designated as a permanent repository. The Subpart B standards have been remanded to EPA by the U.S. Court of Appeals for the First Circuit, and therefore are not in effect at this time. DOE, however, has agreed with the State of New Mexico to demonstrate compliance with the remanded standards before a final decision is made to dispose of waste permanently in the repository. This decision will be made on the basis of data gathered during the test phase at the WIPP.

Finally, EPA emphasizes that today's proposal addresses only the specific question of whether hazardous constituents will or will not migrate from the WIPP for the purposes of the RCRA no-migration variance. Issues raised by the transportation of waste to the WIPP site, or by the handling and possible treatment of waste before it

reaches the WIPP, are beyond the scope of this notice.

II. Summary of DOE Petition

DOE initially submitted its no-migration petition for the WIPP in early March 1989, with two addendums submitted on October 1, 1989, and January 22, 1990. For the convenience of commenters, DOE has consolidated the various parts of the petition and reprinted them as a single document, dated March 1990. This consolidated document has been placed in the public docket for today's proposal as DOE's complete no-migration variance petition. This petition, which consists of six volumes, provides the information required by 40 CFR 268.6, including facility description, site characterization, waste characterization, description of anticipated repository performance, modeling of potential environmental releases, air monitoring plan, seal designs, demonstration of compliance with other federal, state, and local requirements, and other items. EPA has carefully reviewed this document and concluded that, together with other materials submitted by DOE in support of the petition, it constitutes a complete submission, providing sufficient information for EPA to propose a tentative decision on the variance request.

Beyond the petition itself, several documents have been critical to EPA's review and its proposed decision. Two documents, in particular, are important adjuncts to DOE's petition: DOE's "Draft Final Plan for the Waste Isolation Pilot Plant Test Phase: Performance Assessment" (December 1989, DOE/WIPP 89-011) and its "Draft Waste Retrieval Plan" (January 1990, DOE/WIPP 89-022). The first document provides important details on DOE's planned activities during the test phase; the second describes the procedures by which DOE will retrieve waste from the repository if it cannot demonstrate the long-term acceptability of the facility. DOE's test plans and the retrievability of any waste placed in the WIPP are central considerations in the approach EPA is proposing today.

In addition, EPA has paid particular attention to DOE's Draft and Final Supplemental Environmental Impact Statements (April 1989 and January 1990, DOE/EIS-0026-FS), which discuss in detail many aspects of facility performance; the Design Validation Report (October 1986, DOE/WIPP 86-010), which discusses the validation of the design for underground openings; and DOE's draft "Final Safety Analysis

Report" (June 1989, WP-02-9). Also particularly important has been DOE's "Safety Analysis Report for the TRUPACT-II Shipping Package" (June 27, 1989), which provides information on waste compatibility, gas release, and other questions developed by DOE to support the Nuclear Regulatory Commission's approval of waste shipment. Beyond these sources, DOE provided EPA with several hundred additional reports, studies, and other documents, as background support to the no-migration petition.

These, and all other documents considered by EPA in reaching its proposed decision, have been included in the public docket for this rulemaking. The docket also contains a complete list of items considered.

III. Summary of Proposed Decision

EPA is proposing today to grant a "conditional" no-migration variance to the DOE for the WIPP. This variance would allow DOE to place mixed waste subject to the RCRA land disposal restrictions in the WIPP for testing and experimentation to determine whether the site is appropriate for the long-term disposal of mixed waste. The proposed variance would be restricted to mixed wastes emplaced in the WIPP repository for the purpose of testing and experimentation designed to show the long-term acceptability of the WIPP (that is, its conformance with standards for permanent disposal of radioactive and hazardous wastes). DOE would not be allowed to conduct an "operations demonstration," involving the placement of waste underground for the purposes of demonstrating that the facility is operationally ready to receive waste. Furthermore, DOE would not be allowed to begin the permanent disposal of waste subject to RCRA land disposal prohibitions at the site under today's proposal. Finally, DOE would be required to remove all wastes subject to the variance from the repository if it could not demonstrate no migration of hazardous wastes over the long term. (It should be noted that DOE has committed to conducting such a removal in its no-migration variance petition, as well as in a consent agreement with the State of New Mexico.)

In support of today's proposal, EPA has tentatively determined that there is a reasonable degree of certainty that hazardous constituents will not migrate from the WIPP disposal unit during the test period. In making this tentative determination, EPA has considered all possible routes of release, but has focused in particular on the release of volatile constituents in the course of testing and the potential for these

constituents to migrate out of the WIPP unit through the ventilation shaft. Because of the nature of the tests that will be conducted, and their relatively short duration, EPA believes that release of hazardous constituents from the unit through brine, salt, or other geologic media is implausible during the test phase.

The retrievability of waste placed in the WIPP during the test phase is central to the conditional variance EPA is proposing today; therefore, EPA also reviewed both the technical feasibility of retrieval and the practicability of DOE's retrieval plan. EPA has tentatively concluded that retrieval of wastes from the WIPP can be accomplished safely, and that DOE's commitment to retrieval, if it proves necessary, is satisfactory. Finally, EPA has considered the general design, construction and mine maintenance program at the WIPP, and has concluded that the mine is well-designed and will remain stable (with proper maintenance) during the test period and well beyond.

Although today's proposed variance is specifically based on a finding of no migration of hazardous constituents from the unit during the test phase, EPA has thoroughly reviewed available information on the expected long-term performance of the WIPP repository. Given the geologic stability of the area; the depth, thickness, and the very low permeability of the salt formation in which the repository has been mined; and the properties of rock salt as an encapsulating medium, EPA believes that the WIPP is a promising site for a permanent mixed-waste repository. Nevertheless, a number of uncertainties related to the long-term performance of the WIPP remain—for example, the extent and effects of gas generation, the effect of brine inflow into the repository, and the influence of a "disturbed rock zone" around the mined repository. DOE will be investigating these uncertainties in the test phase at the WIPP, and it will review whether technical modifications to the repository design or the waste are necessary to ensure compliance with the regulatory standards.

Before DOE can permanently dispose of untreated mixed wastes in the WIPP, it must demonstrate no migration over the long term—that is, it must successfully address current uncertainties about long-term WIPP performance. Information gathered by DOE during the test phase will be central to such a demonstration. Any EPA decision to grant (or deny) a variance for permanent disposal will be made with full opportunity for public

comment, as prescribed in 40 CFR 268.6(g).

The specific conditions of today's proposed variance for the test phase are listed in Section V of this notice. The basis for EPA's tentative decision and the major issues addressed in the course of EPA's review are discussed in the following section. EPA has also developed a background document, which discusses in more detail the geology of the site, repository performance, waste characterization, and air monitoring. This document is available in the public docket for this proposed action.

IV. Discussion of Issues and Basis of Proposed Finding

A. Definition of No Migration for as Long as the Waste Remains Hazardous

Section 268.6(a) of 40 CFR states that petitioners for a no-migration variance must demonstrate, to a reasonable degree of certainty, that hazardous constituents will not migrate from the disposal unit or injection zone for as long as the waste remains hazardous. EPA proposes to interpret this standard to mean that hazardous constituents cannot migrate from the unit at hazardous levels. In other words, to show "no migration," the petitioner must demonstrate that constituents released from the unit do not exceed health-based standards at the point where they exit from the unit.

EPA adopted this interpretation of "no migration" in its final standards for underground injection wells under 40 CFR part 148 (53 FR 28122, July 26, 1988), and it is taking the same approach in its review of other no-migration petitions submitted under section 268.6. EPA believes that this interpretation of the no-migration standard is a permissible reading of the statute, because the logical focus of the statutory language is whether what escapes from the unit is hazardous. The ultimate judgment required by the statute is whether the prohibition on land disposal "is required in order to protect human health and the environment," a determination that will depend on the concentration levels of constituents. Similarly, in making this determination, the Agency must take the toxicity of waste constituents into account, which necessarily involves consideration of the concentration of the constituents.

The legislative history of the statute likewise indicates that the no-migration demonstration should focus on whether what migrates is hazardous. The Senate Report states that "the Administrator is required to find that the nature of the

facility and the waste will assure that migration of the waste will not occur while the wastes still retain their hazardous characteristics in such a way that would present any threat to human health and the environment." S. Rep. No. 284, 98th Cong., 1st Sess., 15. Waste constituents migrating from a unit at allowable risk to human health and the environment satisfy this standard, as negligible harm to human health and the environment would result.

The statute refers to migration of "hazardous constituents" without defining the term. In other EPA regulations, the term "hazardous constituents" normally has regulatory consequence only if the concentrations of hazardous constituents are significant enough to pose a risk above allowable levels. (See 52 FR 32453, August 27, 1987, which describes the Agency's use of the term in the listing, delisting, closure, and groundwater protection standard regulations.) It is a reasonable construction of the statute that Congress intended the same approach here. It is possible that Congress was equating wastes and hazardous constituents, so that when Congress stated that there shall be "no migration of hazardous constituents * * * for as long as the wastes remain hazardous," it was referring to waste constituents whose migration is prohibited for as long as they remain hazardous, i.e., are at hazardous levels. The passage from the Senate Report cited above appears to support this reading, since it uses the terms "waste" and "constituent" interchangeably.

EPA acknowledges that the statute could also be interpreted as requiring that a single molecule of any hazardous constituent (i.e., substances listed in Appendix VIII of 40 CFR part 261) may not migrate for as long as the waste in the unit remains hazardous. EPA believes that this is not a preferred reading of the statute, given that the health and environmental concerns focus on whether hazardous levels of constituents leave the unit, and not whether hazardous levels remain in the unit. The alternative reading is not compelled by the statutory language nor the legislative history, and is not necessary to protect human health and the environment. A zero molecule standard would be impossible to meet, both because it is impossible to monitor or realistically model the fate of individual molecules (or atoms) of waste constituents and because certain waste constituents are substances that persist indefinitely. Congress simply would have forbidden all land disposal of untreated hazardous waste if this were

its intent. Congress, however, expected that some individual land disposal units might be able to satisfy the standard. S. Rep. No. 284 at 14; H. Rep. No. 198, 98th Cong., 1st Sess. at 34; S. 9153. In addition, even under this latter reading, nonhazardous levels of constituents would be allowed to migrate once wastes in the unit were no longer hazardous. Thus, EPA believes the appropriate focus is on whether constituents ever migrate at hazardous levels. The Natural Resources Defense Council has challenged this Agency construction of RCRA in the context of EPA's regulations for underground injection at 40 CFR part 148. *NRDC v. EPA* No. 88-1657 (D.C. Cir.). The court decision is pending.

In establishing hazardous levels of hazardous constituents—that is, the levels of a compound that would fail the no-migration standard—EPA proposes to rely on peer-reviewed health and environmental effects data, where available. These data are based for the most part on the drinking water Maximum Contaminant Levels (MCLs), surface water quality criteria (Ambient Water Quality Criteria, 45 FR 79318, November 18, 1980; 49 FR 5831, February 15, 1984; 50 FR 30784, July 29, 1985), verified Reference Doses (RfDs) for systemic toxicants developed by the Agency's Risk Assessment Forum (Verified Reference Doses of USEPA, ECAO-CIN-475, January 1986), and Risk-Specific Doses (RSDs) for carcinogens developed by the Agency's Carcinogen Assessment Group. EPA typically combines these dose levels with standard exposure numbers for each medium (e.g., groundwater and air) to obtain allowable health and environmental exposure levels. The standard exposure numbers assume direct human exposure at the point of compliance or, to be specific, the unit boundary. This is consistent with the approach EPA promulgated in the 40 CFR part 148 regulations for no-migration petitions for underground injection wells.

Finally, the statute requires the petitioner to demonstrate no-migration for "as long as the waste remains hazardous." Typically, EPA would judge this demonstration on the basis of an understanding of the waste transformation process and of the long-term performance of the disposal site, in combination with predictive modeling. In many cases, hazardous wastes can be expected to degrade over time, limiting the scope of predictive modeling required. For example, in the case of land treatment facilities—which are specifically designed to degrade organic

wastes through microbial action—degradation of hazardous constituents might take place over a 90-day time period. In other cases, degradation will take significantly longer. In the context of underground injections, EPA provides that, if petitioners can demonstrate no-migration over a 10,000-year period, they will have met the statutory standards (40 CFR 148.20). Petitioners may also demonstrate that their wastes would be nonhazardous or otherwise immobilized on the basis of a showing of chemical transformation or fate. (Id.)

In the case of the WIPP, heavy metals such as lead will not degrade, and therefore will remain hazardous virtually indefinitely—certainly far beyond the predictive capabilities of any models. For this reason, EPA believes that its final determination concerning the WIPP's conformance with the no-migration standard over the long term must rest on the Agency's professional judgment regarding the containment properties of the Salado formation within the vicinity of the WIPP, and on any transformation or immobilization of wastes within the unit. The Agency's views on the long-term acceptability of the WIPP are discussed in Section IV.F of this notice.

At the same time, predictive modeling can act as a check and provide insight into the long-term performance of the site. In its no-migration petition, DOE has modeled possible waste migration out of the WIPP through brine flow along the sealed shafts over a 10,000-year period. Under this model, hazardous constituents would not come anywhere near the upper edge of the Salado formation within the modeling period. (DOE's modeling exercise is discussed in more detail in section IV.F of this notice.) Because of the uncertainties of long-term modeling, EPA believes that, for the purposes of determining compliance with RCRA no-migration standards, it is not particularly useful to extend this model beyond 10,000 years into the future. While modeling over longer periods had certain uses—for example, in comparing the performance of different repositories—EPA questions whether models have the precision to be used in making a meaningful prediction of whether a specific unit will or will not meet no-migration standards after many thousands or millions of years. The Agency, however, does believe that modeling over a 10,000-year period provides a useful tool in assessing the long-term stability of the repository and the potential for migration of hazardous constituents. In summary, the Agency is not proposing a specific limit on the time

over which no-migration must be demonstrated. Instead, it believes that the final determination should be based primarily on a knowledge of the geologic conditions at the site, supported by modeling.

B. Unit Definition

The definition of the disposal unit's boundary is critical to any decision on a no-migration variance. The boundary of the unit will define the point of compliance; that is, the point at which potential migration would be measured. If waste constituents migrated beyond this point at hazardous levels, a variance could not be granted, while movement of wastes within the unit boundary would be acceptable. In the case of the WIPP, the question of the unit boundary is of particular importance, because there is limited regulatory precedent for defining the boundary of geologic repositories, and because of the general absence of clear engineered barriers designed to contain the waste.

Under current regulations, a "hazardous waste management unit" is defined as a "contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area" (40 CFR 260.10). This definition on its face allows considerable flexibility when it is applied to underground repositories. Clearly, the salt bed formation in the vicinity of the repository represents a contiguous "area" of land in which the waste is placed. The regulatory definition does not preclude the inclusion of at least a portion of the surrounding formation in the "disposal unit." It provides little guidance, however, on where the exact points of compliance should be drawn.

EPA has discussed the issue of unit definition in a draft guidance on no-migration petition variances for land disposal units other than underground injection wells. In this guidance, EPA explained that, for units with engineered barriers, the unit boundary should be considered the outermost extent of the engineered barrier. Thus, for a landfill, the outer boundary of the unit would be the outside of the berms and engineered liners (either clay or synthetic). In the case of units without such barriers, other rules would have to apply. For example, the boundary of an unlined land treatment unit would be set at the base of the maximum treatment zone (which cannot exceed a depth of 5 feet from the soil surface). In this case, EPA has recognized that the purpose of a land treatment unit is to allow some

movement of a waste down into the soil, as it is being treated, absorbed, or transformed. However, if constituents move out of the treatment zone at hazardous levels, migration from the unit has occurred. In its draft guidance, EPA also recognizes that defining the unit boundary of a geological repository raises special issues. Although the guidance does not discuss the specific issues raised by these units, it states that their boundaries should be defined on a site-specific basis.

One final precedent should be mentioned. RCRA 3004 (d), (e), and (g) require that a no-migration variance be based on no migration of hazardous constituents from the disposal unit or the injection zone. EPA discussed the meaning of the term "injection zone" in its recent regulations establishing standards for no-migration variances for underground injection wells. In the preamble to those regulations, EPA explained that an injection zone is defined in 40 CFR 146.3 as "a geologic formation, group of formations, or part of a formation receiving fluids through a well." The Agency went on to clarify that the injection zone includes confining material as well as the more permeable material into which the waste is injected (53 FR 28122, July 28, 1988). EPA emphasizes that, for the purposes of RCRA compliance, it considers the WIPP to be a miscellaneous land disposal unit rather than an injection well. Therefore, the relevant standard for the WIPP is the "unit boundary," rather than the "injection zone." The underground-injection rule, nevertheless, does define the concept of no-migration in the context of somewhat similar underground disposal and, thus, has some relevance to the WIPP.

The boundaries of the WIPP must be defined in light of these general precedents, as well as the specific circumstances of the facility. As described earlier, the WIPP is an underground geologic repository mined within a relatively homogeneous salt bed. After waste has been placed in the WIPP and the shafts have been sealed, the salt bed will creep and encapsulate the waste. If the WIPP works as intended, the encapsulating salt will act as a barrier and prevent the migration of the waste out of the immediate vicinity of the mined area. Clearly, migration of hazardous constituents at hazardous levels from out of the sealed repository into unconfined aquifers lying above or below the salt bed would constitute migration from the unit; similarly, movement of constituents at such levels via air to the surface atmosphere during

the operations of the facility would also constitute migration.⁴ Beyond these general limits, however, there is no immediately obvious point where the boundaries of the underground repository must be drawn. In today's notice, the Agency discusses alternatives for defining the WIPP boundary and proposes an approach that, it believes, fully protects human health and the environment, meets the statutory and regulatory standards, and accurately reflects the particular situation of an underground salt-bed repository.

To begin with, the immediate underground disposal area and the shafts of the WIPP are clearly within the disposal unit. The shafts, however, are a hypothetical route of migration out of the salt bed as a result of brine flow. The Agency proposes that the point of compliance, for the purpose of assessing migration out of the unit by way of the shafts, be defined as the point where the Salado formation (i.e., the salt bed) meets the overlying Rustler formation. This is the point at which migrating constituents could be expected to escape from the long-term engineered barrier designed to contain the waste—that is, the compacted salt shaft seal ending at the top of the Salado formation—and potentially move into an overlying aquifer. Although the possibility of human or significant environmental exposure is virtually nonexistent at this point, EPA believes that compliance with the no-migration standard should nevertheless be measured there. The appropriate standard is whether hazardous constituents have migrated from the unit at hazardous levels, not whether exposure is likely or whether the concentration of hazardous constituents will be significantly reduced in the course of migration outside the unit boundary.

The point of compliance for the WIPP is more difficult to define if hazardous constituents move through the salt bed itself, rather than along sealed shafts. Theoretically, hazardous constituents may migrate laterally or horizontally in the salt bed—for example, along

⁴ The Agency believes that it must consider the air exposure pathway in assessing the no-migration standard. The statute does not limit the environmental pathways to be considered in making the no-migration demonstration. Moreover, given the policy goal of the land disposal prohibition provisions to end land disposal of wastes that have not been treated to satisfy the section 3004(m) standards, except for wastes disposed of in units that meet the rigorous no-migration standard, it is not appropriate to ignore a major environmental pathway in assessing whether the no-migration standard is met.

fractures or anhydrite marker beds. The Agency believes that, considering the purpose and design of the WIPP, a certain amount of movement within the confining salt bed should be considered movement within the unit. The underground repository has been designed so that the salt bed will creep, encapsulate the waste, and contain it. If the WIPP works as planned, there will be limited movement of contaminants into the salt bed, but the constituents will be effectively blocked from potential routes of release. In this respect, movement within the salt bed is analogous to movement within the treatment zone of a land treatment facility, the engineered clay liner of a landfill or surface impoundment, or the confinement material of an injection zone. EPA therefore proposes that the disposal unit include at least part of the surrounding Salado formation, bounded on top by the Rustler formation and underneath by the Castile formation.

The Salado formation, it should be noted, extends horizontally for approximately 36,000 square miles. While EPA believes, for the reasons stated above, that some movement from the original repository through this bed should not constitute "migration from the unit," it also believes that unlimited lateral movement would be inconsistent with the overall integrity of the disposal practice. The Salado formation surrounding the WIPP (unlike an underground injection zone) is very low in permeability and is intended to encapsulate and confine the waste. If the waste disposed of at the WIPP moved laterally for significant distances into the encapsulating formation, the repository clearly would not be operating as intended, and the integrity of the disposal practice would be called into question. It would be hard in this case to argue that migration was not occurring.

Extensive lateral migration might also be problematic because there are a number of potential routes of waste migration in the Salado formation outside of the immediate vicinity of the WIPP. These include numerous boreholes and mines, both old and currently operating, and localized areas of salt dissolution. If wastes moving laterally from the WIPP reached these possible routes of migration, hazardous constituents could conceivably be released to overlying aquifers. To address this concern, EPA believes that it is appropriate and necessary to set lateral boundaries on the movement of waste within the Salado formation, beyond which "migration" from the unit would be considered to occur.

After reviewing the specifics of the WIPP site, the Agency has tentatively concluded that the 4-mile by 4-mile WIPP land withdrawal area represents the most appropriate lateral boundary of the disposal unit. This area is clearly defined, relatively limited in size (compared to the Salado formation), and coincident with the land under DOE control. The Agency has carefully reviewed the geology of this specific area, and has tentatively concluded that no realistic routes of migration lie within it—other than the hypothetical route of escape up the shaft seals. Defining the unit boundary at the edge of the WIPP site, therefore, would effectively isolate the wastes from possible routes of migration beyond the immediate limits of the WIPP site and confine it to an area whose geology EPA has examined in detail. At the same time, this boundary will allow some relatively limited movement of hazardous constituents through the encapsulating salt, which as discussed above is consistent with the design of the WIPP. In addition, as discussed below, the possibility of human intrusion resulting from future drilling operations would be minimized because of federal control of the land area and mineral rights in perpetuity, as well as other institutional controls that will be required at the site.

EPA believes that this approach is not only consistent with current practice, but also reflects Congressional intent. The legislative history of the 1984 amendments states that "in determining appropriate confinement from which migration should not be allowed to occur the terms disposal unit or injection zone should be construed * * * in terms of overall integrity of the disposal practice, keeping in mind, in particular the potential for contamination of groundwater or surface water resources" (S. Rep. No. 284 98th Cong., 1st Sess. at 15). If hazardous constituents disposed of at the WIPP remain within the Salado formation and within the WIPP land withdrawal area, the overall integrity of the disposal practice will clearly be intact, and any potential for contamination of groundwater, surface water, or other resources will be eliminated.

Another option considered by EPA was to define the unit boundary as the walls of the salt mine, or alternatively as the furthest extent of the disturbed rock zone surrounding the excavated area. (The rock surrounding the open repository has been found to fracture as a result of salt creep. The disturbed rock zone is believed to extend one to five meters beyond the mine walls.) The

Agency has rejected this approach in today's proposal because defining the unit boundary at this point would run contrary to the intended performance of the WIPP. The WIPP is designed to confine wastes within the salt bed, not to prevent any movement of constituents into the surrounding salt formation as the formation encroaches on the waste and encapsulates it. For example, it is possible that waste would migrate limited distances laterally along horizontal marker beds within the Salado formation. Yet this migration, as long as it remained within the immediate vicinity of the original repository, would in no way threaten the "overall integrity of the disposal practice." Drawing the unit boundary right at the repository walls or at the furthest extent of the disturbed rock zone therefore would be inappropriately limiting, and would not accurately reflect the intended performance of the WIPP. For these reasons, EPA has not proposed the mine walls or the disturbed rock zone as the WIPP unit boundary. (It should be noted that the proposed unit boundary at the WIPP is based on site- and unit-specific considerations, which may not apply to other types of units.)

The preceding discussion focuses on long-term migration of hazardous constituents, once the repository has been sealed. It is also possible that hazardous constituents will migrate from the unit via air during the operation of the WIPP. It is clearly a permissible, if not mandated, construction of the RCRA no-migration provisions to consider an air pathway as part of the no-migration demonstration. The statute requires the demonstration of encompass "no migration of hazardous constituents for as long as the waste remains hazardous," and consequently includes all potential migration pathways. In addition, there is no logical reason to ignore the air migration pathway in assessing no-migration petitions. For this reason, EPA is proposing to consider migration via air at the WIPP.

Air migration at the WIPP would be a potential concern during both testing and operations at the facility. During these activities, bins and drums underground will be vented to prevent buildup of gas pressure within the containers. To ensure mine safety, the repository will be ventilated, with exhaust air flowing up an air shaft and out into the general atmosphere. This shaft, therefore, represents a possible route of escape for hazardous constituents from the disposal unit.

The Agency proposes that the point of compliance for the air route during

operations be defined as the point where vented repository air exits from the exhaust shaft and enters into the general atmosphere. During its operational period, the WIPP is in effect an enclosed or "covered" unit, with a single point of air release. Once hazardous constituents have exited from the point of release and entered the general atmosphere, EPA believes that migration from the enclosed unit has occurred. Up until that point, however, air emissions are contained within the repository, and should not be considered to have migrated from the unit. This proposed approach is consistent with the approach EPA is considering for covered surface impoundments or waste piles. In its draft guidance for no-migration petitions, EPA has defined "the outer limit of any engineered barrier over the unit (roof, dome, etc.)" as the air point of compliance for covered units. For the WIPP, the outer limit of the engineered barrier over the unit is the point of release from the shaft. (In the case of the WIPP, the question of where in the air exhaust migration is measured is in fact moot. Because the shaft is nothing more than a vent, concentrations of hazardous constituents will be the same at all points in the shaft. Therefore, for all practical purposes, the unit boundary for air releases could be defined as anywhere in the shaft.)

In summary, the Agency is proposing the following points of compliance for determining no migration from the WIPP:

1. For upward movement out of the repository (e.g., along shaft seals): The point of contact between the Salado and the Rustler formation.
2. For downward movement: The point of contact between the Salado and the Castile formation.
3. For lateral movement: The boundary of the 4 x 4 mile WIPP land withdrawal area within the Salado formation.
4. For air migration: The point where the air exhaust shaft releases to the ambient environment.

The Agency solicits comments on these proposed points of compliance as well as on other alternatives.

C. Conditional Variance

As described earlier, DOE intends to begin WIPP operations with a 5-year test program. The purpose of this program is to demonstrate the long-term acceptability of the WIPP and to show compliance with EPA's disposal standards for TRU wastes. Although substantial information on the long-term performance of the WIPP has been gained over the last fifteen years,

important issues remain, particularly in relation to gas generation. DOE plans to investigate these and other issues during the test period. The results of this investigation may confirm the acceptability of the WIPP as currently planned, or may identify necessary engineering or other modification to the waste or the facility. It is also possible that, at the conclusion of the test period, the WIPP will fail to meet AEA or RCRA standards for permanent disposal. In this case, DOE will be required, and has committed, to remove the waste from the underground repository and seek another disposal strategy.

The no-migration variance EPA is proposing today would allow DOE to place waste in the WIPP for the purpose of conducting tests or experiments to demonstrate the long-term acceptability of the facility. The variance would be granted on the condition that DOE remove waste placed underground for testing if its performance assessment fails to show that the WIPP meets the no-migration standard over the long term. Testing and experimentation would include the bin and alcove tests outlined in DOE's draft test plan for the WIPP, but would not include the "operations demonstration." This demonstration is aimed at showing the readiness of the WIPP to receive waste, but not to show its long-term acceptability. The variance would have to be modified, or a revised variance issued, before untreated mixed waste subject to the RCRA land disposal procedures could be placed in the WIPP for purposes other than testing or experimentation. Modification or reissuance of the variance, in this case, would take place according to the full variance approval procedures of 40 CFR 268.6(g). For example, the operations demonstration would not be allowed under the variance proposed today without public notice in the *Federal Register*, opportunity for public comment, and EPA approval.

EPA believes that a conditional variance, limited to testing and experimentation, is appropriate for the WIPP because the Agency has tentatively concluded that migration will not occur during the test phase. In addition, WIPP shows promise as a permanent disposal site. Because of the possible consequences of gas generation as well as other uncertainties, however, DOE cannot at this time demonstrate no-migration of hazardous constituents over the long term. The conditional variance proposed today would provide DOE with the opportunity to conduct this in-situ testing on gas generation with actual mixed waste, while ensuring that no migration occurs during the test

period itself, and that wastes will be removed from the WIPP if the demonstration ultimately cannot be made.

EPA notes that the concept of a conditional no-migration variance for the WIPP is consistent with the approach it intends to propose in other cases as well. For example, EPA is now considering "conditional" no-migration variances for a number of land treatment demonstrations involving petroleum refinery wastes. The purpose of these demonstrations is to provide data necessary to show no-migration during full commercial operation, as well as to allow EPA or an authorized state to collect data to set specific permit conditions. Under a "conditional" variance, a demonstration could proceed, as long as the facility operator could show that no migration would occur during the demonstration, and that the long-term demonstration for a permanent disposal had a reasonable chance of succeeding. If the demonstration succeeded, permanent disposal could then begin. If it failed, the operator would be required to remove the waste placed during the demonstration and dispose of it according to RCRA Subtitle C requirements. Similarly, EPA is also reviewing a no-migration variance petition for the temporary storage of untreated hazardous waste in a pile before incineration. In this case, the facility owner would be required to demonstrate that no migration would occur during the storage period; the owner would also be required to remove the pile completely at the end of the storage period. EPA believes that the approach it is proposing today for the WIPP is similar to the approach it is considering for land treatment demonstrations and temporary storage in waste piles. Today's proposal would allow placement of untreated hazardous waste in the WIPP for the limited purpose of testing, as long as migration did not occur during the test period, and the waste would be removed if long-term no-migration could not be demonstrated. See also 51 FR 40605 (November 7, 1986), where the Agency indicated that a potential no-migration situation would be one involving storage in a land disposal unit where wastes would be removed at the end of the storage period.

Section V of this notice describes in detail the specific conditions of the proposed variance. The key condition is the restriction of the variance to the placement of wastes in the WIPP for purposes of testing and experimentation. This condition would allow DOE to

conduct the testing outlined in its petition and other sources—specifically, the bin and alcove-scale tests described in DOE's "Draft Final Plan for the Waste Isolation Pilot Plant Test Phase: Performance Assessment" (December 1989, DOE/WIPP 89-011). (EPA recognizes that DOE's test plan is currently in draft form, and that a final version is not expected until May 1990. If the activities described in the final document differ substantially from those in the draft, EPA will provide the public with an opportunity to comment on how the changes might affect the proposed variance.)

As an alternative to the approach proposed today, EPA considered the possibility of setting a specific limit on the amount of waste that might be placed in the WIPP. The Agency, however, has tentatively rejected this approach. It is difficult at this time to estimate exactly how much waste may have to be placed in the WIPP to satisfy testing needs. DOE currently estimates that the initial phases of the test period will require waste amounting to 0.5% of the total capacity of the WIPP, but the actual amount finally needed is likely to depend on the results of early tests, as well as the extent to which it is necessary for DOE to explore different engineering modifications. EPA thus believes that any specific quantity limit would be difficult to justify, and might artificially constrain legitimate and necessary testing. The Agency solicits comments on the appropriateness of its proposed approach and on the advisability of a volume limit on the waste that may be placed in the WIPP under the variance. It also solicits comments on the specific limit that might be imposed, as well as the justification for setting such a limit.

EPA also considered, but is not proposing, a time limit on the conditional variance, other than the regulatory limit of ten years, which applies to any no-migration variance (40 CFR 268.6(h)). DOE's current plans, as outlined in the December 1989 draft Final Plan for the Waste Isolation Pilot Plant Test Phase (DOE/WIPP 89-011), call for the development of a "final EPA compliance report" four years after first placement of waste in the WIPP, and a final "disposal phase decision" after five years. One option, therefore, would be for EPA to limit any conditional variance to five years. EPA, however, has tentatively rejected this approach because it believes that, like limits on volume of waste placed, specific time limits could artificially constrain legitimate testing. Instead, EPA believes that restricting placement to wastes

used in testing and experimentation will sufficiently limit activities under the conditional exemption.

EPA also notes that today's variance applies only to the activities and conditions described in DOE's no-migration variance petition and in the supporting material provided by DOE. These were the activities and conditions that EPA reviewed in proposing to grant the variance, and therefore they define the limits and scope of that variance. This requirement is enforced through 40 CFR 268.6(e), which requires that facility owners/operators subject to a variance report to EPA "any changes in conditions at the unit and/or the environment that significantly depart from the conditions described in the variance and affect the potential for migration of hazardous constituents from the unit * * *". If a significant change from the petition is planned—for example, a significant change in testing plans or the addition of a test—the owner/operator must notify EPA 30 days in advance, and the change cannot take place without Agency approval. Where the change affects the basis of the no-migration finding, it could not occur before EPA modified the variance through the variance issuance procedures of 40 CFR 268.6. In the case of unplanned changes (e.g., significant new information related to repository performance is discovered), EPA must be notified within 10 days of learning of the unplanned change. If the information warrants such a step, EPA may require that the variance be modified, or it may revoke the variance.

D. Retrievability

As a condition of granting the no-migration petition during the test phase, the Agency is proposing to require that DOE remove all TRU waste subject to this variance from the underground repository if the no-migration demonstration cannot be made for permanent disposal. EPA believes that DOE has reasonably demonstrated that the waste can be retrieved by: (1) Successfully performing mock retrieval demonstrations, (2) providing technical information to show that waste can be removed from the underground repository, (3) demonstrating mine stability during the test phase, and (4) storing the waste in retrievable containers. DOE has committed to removing the waste, if it cannot demonstrate compliance with the no-migration standards for permanent disposal or the disposal standards of 40 CFR 191 for radioactive waste.

DOE's commitment to retrieve test-phase waste has been clearly delineated in several documents, including the

"Working Agreement for Consultation and Cooperation" with the State of New Mexico (Article IV).⁵ This document establishes, under Public Law 96-164, eight milestones that must be met before the retrievability decision can be made. Key milestones outlined in that agreement include development of a waste retrieval plan and conduct of mock retrieval demonstrations of CH and RH TRU waste. Successful mock retrieval demonstrations have been conducted at the site, and no unsafe conditions occurred during the demonstrations. These demonstrations have been described in two DOE documents, "Report of the Remote-Handled Transuranic Waste Mock Retrieval Demonstration" (May 1987) and "Final Report for the Contact-Handled Transuranic Waste Mock Retrieval Demonstration" (January 1988), which have been included in the docket for this proposed decision. DOE has also developed a draft retrieval plan; under the retrieval plan, an additional alcove retrieval simulation will be conducted. The final waste retrieval plan is expected to be published in April 1990. If there are significant changes in the final plan affecting the no-migration decision, EPA will reopen the comment period to allow comment on those changes.

The stability of rooms during the test period has at times been raised as an issue. The repository rooms have experienced a creep closure rate, at least initially, that is three times what was originally predicted. (The closure rate has been measured at a few inches per year, although the rate depends somewhat on room size.) As a result, early room closure and fracturing of walls or ceilings have been a concern. DOE will address this concern in the alcove test rooms by reducing their size (and thus increasing stability), rock bolting the backs (roofs), and constructing standoff walls in those alcoves to be backfilled with salt. (Standoff walls are walls placed between the drums and the repository walls to ensure that room closure does not impinge on the backfilled drums.) The bin-scale test rooms will be rock bolted to insure stability, and will not be sealed. The Agency has reviewed the design of the test rooms, including the use of rock bolts, and believes that the rooms will be stable during and after the test phase. The petition also indicates

⁵ In addition, DOE has committed to removing test-phase waste in the Final Supplemental Environmental Impact Statement for WIPP (Volume 1, page 2-15) and in its no-migration variance petition.

that during the test phase all waste will be placed in the repository in a readily retrievable manner, i.e., all wastes will be in retrievable containers, and wastes will not be backfilled (except in the case of two alcoves, where "standoff" walls will be used). After reviewing the material DOE provided with its petition, EPA has tentatively concluded that the measures to be taken will allow for the safe removal of the waste within the time-frame required for the test phase.

Since room stability and waste containment are critical to the assurance of waste retrieval at the end of the test phase, EPA is proposing to require that all waste emplaced in the repository during that period be placed in a readily-retrievable manner. By "readily-retrievable," EPA means adoption of the specific measures identified in DOE's petition to maintain room stability (i.e., room size, rock bolting, and standoff walls) and the use of easily-retrieved waste containers (boxes, bins, drums). Significant changes to these conditions would require a modification to the variance.

The draft retrieval plan identifies several options for alternative storage of the TRU waste if it is retrieved. While a specific storage and disposal alternative or site was not selected, the Agency believes that DOE has made a satisfactory commitment to remove the waste, if considered necessary. To ensure that any mixed waste removed from the repository is handled appropriately, EPA has included as a condition the requirement that removed waste be managed in accordance with RCRA subtitle C requirements.

E. Post-Closure Controls

Although today's proposed variance for the WIPP is based on a finding of no-migration during the test period, EPA has extensively reviewed a significant body of information related to the long-term performance of the WIPP. In this review, EPA has focused on the "undisturbed" performance of the repository. In other words, the Agency has not specifically reviewed or assessed possible releases from the WIPP that might occur if the facility were disturbed as a result of human intrusion—for example, in the course of oil and gas exploration at some point in the future. EPA believes that, in the context of RCRA no-migration variance decisions, the question of human intrusion, either during operations or after closure, is best addressed through a consideration of the likelihood of intrusion, and the imposition of controls to make such intrusions unlikely events.

EPA emphasizes that this approach to human intrusion is consistent with its

general approach under RCRA, both in permitting and variances. Under RCRA, EPA typically relies on institutional controls (both active and passive) imposed through general regulatory standards and site-specific conditions (e.g., in RCRA permits) to ensure that access to a hazardous waste disposal site is appropriately restricted. EPA believes that any permanent no-migration variance for the WIPP will have to impose long-term passive institutional controls, such as land withdrawal, records, and markers—to ensure that the likelihood of human intrusion is appropriately reduced, even after active control of the facility has ceased and any permits at the site may have terminated.

The specific conditions that EPA might impose in a no-migration variance for the WIPP to reduce the possibility of human intrusion in the future would be addressed in the context of any decision that EPA might make on a variance for permanent disposal. Thus, for today's proposal, which applies solely to the test period, the issue of human intrusion in the distant future is not relevant. Nevertheless, EPA notes that DOE has taken, or has committed to taking, several important steps to reduce the possibility of human intrusion after closure of the facility. The most important of these steps, which would likely be conditions for a no-migration variance for permanent disposal, are described below.

First, DOE states that the site will remain under federal jurisdiction in perpetuity, and therefore it or successor agencies will be in a position to restrict access. Furthermore, in August 1987, DOE and the State of New Mexico agreed to prohibit in perpetuity all subsurface mining, drilling, or resource exploration on the WIPP site unrelated to the WIPP project. Finally, the Federal government owns the entire surface and subsurface estate at the WIPP site, with the exception of a single potash leasehold interest; DOE states it is now negotiating with the owner of that leasehold interest. DOE also states that, at WIPP closure, it will notify all state and county planning, deed and record offices, oil and gas commissions, and other agencies, to prevent access by unknowing parties. It will also place permanent warning markers at the site, as required by 40 CFR part 191 standards.

These specific controls, and perhaps others, would constitute assurances against human intrusion for the variance for permanent disposal. But in one area EPA believes a specific condition may be appropriate for today's proposed variance. As mentioned above, DOE is

now attempting to secure a potash leasehold interest at the site; it has indicated that it will resolve this issue by mid-May 1990. EPA, however, is concerned about the possibility that this interest might not be secured before mixed waste is placed in the WIPP. Therefore, it is proposing to require, as a condition of a variance for the test phase, that DOE must certify to EPA that it has secured control of the entire surface and subsurface estate at the WIPP (including the potash leasehold), before waste is placed in the WIPP. At the same time, EPA notes that the current land withdrawal at the WIPP site prohibits mining, and any future land withdrawal is likely to include a similar prohibition. Therefore, EPA solicits comment on the appropriateness and the need for this proposed condition.

F. Site Geology and Hydrology

40 CFR 268.6(a) requires that a petitioner seeking a no-migration variance provide a comprehensive characterization of the disposal unit site. For a facility such as the WIPP, this characterization must address the regional and site-specific geologic and hydrologic characteristics in the vicinity at the site. This section of the preamble describes the general site geology and hydrology of the WIPP.

EPA believes that DOE has provided sufficient information to demonstrate that hazardous constituents will not migrate from the unit by any geologic pathway during the WIPP test period. (For a discussion of this issue, see sections IV.J and IV.K of this notice.) Furthermore, the general area of the site has been shown to be geologically stable, and the confining unit (that is, the Salado Formation) appears to be a good medium for disposal, given its thickness, general homogeneity, and low permeability. In addition, the relative remoteness of the site and the limited ground water in the area, while not relevant to a no-migration finding under RCRA, were an important consideration in site selection. While several uncertainties remain concerning the long-term performance of the repository, the Agency believes that the site will not present a problem during the test phase. These uncertainties are being investigated by DOE as part of the test program. Data from this assessment will be essential in any EPA finding of no-migration with respect to the permanent disposal of waste at the WIPP.

1. Site Overview

The WIPP site is located in southeastern New Mexico, in the Pecos

Valley section of the southern Great Plains physiographic province, a broad highlands that slopes gently eastward from the Basin and Range physiographic province. The site is located in the northern section of the Delaware Basin, which is a portion of the larger Permian Basin of the Texas/New Mexico area. The Delaware Basin is a broad, oval north-south trending trough, in which there are over 6,100 meters of structural relief on top of the Precambrian basement. The basin rocks show little deformation, and have undergone only minor tectonic activity since the end of Permian time, approximately 225 million years ago. In ascending order, the Permian units at the site are the Delaware Mountain Group of the Guadalupian Series (Brushy Canyon, Cherry Canyon, and Bell Canyon Formations), followed by the Ochoan Group (the Castile, Salado, and Rustler Formations, and the Dewey Lake Red Beds). Above these formations is the Triassic Dockum Group (undivided), followed by Quaternary deposits of the Pleistocene Epoch (Gatuna Formation and Mescalero Caliche). The rocks described above represent approximately 4,000 meters of the stratigraphic column at the site. The repository is located in the Salado Formation, approximately 655 meters (or 2,150 feet) below the surface.

2. Castile Formation Hydrogeology

The Castile Formation is the rock formation directly underlying the Salado. At the WIPP site it is approximately 400 meters thick and is a major halite-bearing unit. The halites, which are of varying purity and thickness, are separated by three relatively thick anhydrite and carbonate beds. Significant volumes of fluid are usually not encountered in the formation. However, reservoirs of pressurized gas and brine have been found in the Castile.

Borehole ERDA-6, drilled in 1975, encountered a reservoir of pressurized brine in the Castile Formation, about 8 kilometers from the current WIPP site. More recently, Borehole WIPP-12, located about 1.5 kilometers from the site center, encountered another brine reservoir in the Castile. Data from recent geophysical studies have led DOE to assume that the WIPP-12 reservoir may extend underneath a portion of the waste emplacement section of the repository. However, the brines are 250 meters or more stratigraphically below the repository horizon, and there appears to be no natural mechanism that would cause the movement of these brines to the repository. Uranium disequilibrium

studies performed on the brine in both the ERDA-6 and the WIPP-12 reservoirs indicate that the fluids are between 360,000 and 800,000 years old; there is also no evidence to show contributions from present precipitation. Furthermore, the brines are saturated with respect to halite, so there is no mechanism for halite dissolution from the fluids. Consequently, after reviewing the data, the Agency has concluded that these brine reservoirs do not present a threat to the integrity of the repository under undisturbed conditions. (DOE is assessing the possible effects of a borehole penetrating through the repository and into an underlying Castile brine pocket, leading to the upward flow of brine into the repository. The issue of possible human intrusion is discussed in section IV.E of this notice.)

3. Rustler Formation Hydrogeology

The Rustler Formation is the rock unit that overlies the Salado Formation. It is composed of five members, in ascending order: The unnamed member at the Rustler/Salado contact, the Culebra Dolomite, the Tamarisk Member, the Magenta Dolomite, and the Forty-Niner Member. Two of the members will be discussed in this notice, because one is in contact with the proposed unit boundary of the disposal unit (unnamed member), and the other member overlying it is the most significant water-bearing stratum (Culebra Dolomite).

The unnamed lower member of the Rustler Formation is a layered sequence of siltstone, gypsum/anhydrite, and halite. Near the WIPP site the average thickness of this member is approximately 35 meters. It contains a siltstone water-producing portion, which may be hydraulically continuous with the upper Salado residuum and any dissolution member of the upper Salado. However, since the Rustler-Salado contact contains water that is saturated with respect to halite, it is not capable of dissolving pure halite.

The member directly above the unnamed lower member is the Culebra Dolomite. If migration from the repository were to occur, this formation is considered the most important potential pathway for release to the environment. The Culebra is a finely crystalline, locally argillaceous and arenaceous, vuggy dolomite, with an average thickness at the site of approximately 10 meters. As a result of fracturing, Culebra transmissivities (which are very low) have been found to range over six orders of magnitude near the WIPP site.

Approximately 60 wells have been completed in the Culebra since WIPP

studies began; water-level measurements have been taken for most of these wells over the life of the project. In these measurements, a good correlation was found to exist between water-level measurements from well to well at the site. However, limited quantities of the water in the formation drained into the shafts of the facility with the drilling of the construction and salt handling shaft. This, coupled with wide variations in fluid density within the formation and very low hydraulic gradients, have made flow directions difficult to define, particularly in the southern area of the site. The freshwater head contours at wells in the area indicate a southwestern flow direction across Nash Draw, a southern flow direction across the WIPP site, and an area of apparent western flow south of the site (apparent because of low hydraulic gradients). In this instance, it is noteworthy to remember that the Culebra Formation is approximately 400 meters above the repository level, meaning that, under undisturbed conditions, the potential for hydrologic interference by the Culebra into the Salado or the possibility of the Culebra being a sink for contaminants from the repository is very low.

As mentioned above, the geochemistry of the Culebra formation waters is highly variable. The total dissolved solids (TDS) concentration of the Culebra in the area of the WIPP varies from 10,000 to greater than 200,000 mg/L. These values render the waters of the Culebra at the site considerably saline and not a source of drinking water. It has been noted that the variability of the salinity of the Culebra waters is such that modern flow directions within the Culebra do not appear consistent with modern salinity distribution. This provides evidence that there is no modern contribution of recharge water into the Culebra at the WIPP site. Evidence suggests that the Culebra has been hydrologically isolated for several thousand years.

The Agency believes that the DOE has adequately described the general hydrologic and geologic conditions for the Rustler Formation for the purposes of this petition. In addition, during the performance assessment, DOE will continue to measure the hydrologic responses of the Rustler with respect to flow direction. This assessment should serve to confirm and refine the current understanding of the uppermost water-bearing stratum in the area.⁶

⁶ It should be reiterated that these studies, while pertinent to an understanding of hydrology in the

4. Salado Formation Hydrogeology

Because the repository has been constructed in the Salado Formation, the Salado is the formation of the most interest at the WIPP site. It is located between the Castile and Rustler Formations. The Salado is informally divided into three members: An unnamed upper member, the McNutt potash zone (the informal regional name for the unnamed middle member), and an unnamed lower member. The rationale for this division is the type and composition of laterally-consistent beds of halite, polyhalite, and anhydrite, with varying amounts of other potassium-bearing minerals. The beds of anhydrite and polyhalite alternate with the thicker beds of halite within the Salado. Indeed, approximately 85 to 90 percent of the Salado is pure halite. The composition of the Salado and the Castile Formations are similar, but the lateral extent of the two formations differ. Unlike the Castile, the Salado is not confined to the Delaware Basin, but extends well beyond the Capitan Reef complex onto the Northwestern Shelf and Central Basin Complex.

The porosity of the Salado is extremely low. While the near-field permeability (immediately surrounding the mined repository) is estimated to range from 1×10^{-14} to 2.5×10^{-11} m² (0.01 to 25 microdarcies, where one darcy = 10^{-4} m²), with an average of approximately 0.3 microdarcy, the far-field permeability has been measured at approximately 10^{-20} m² (one nanodarcy). The Salado Formation was initially thought to contain only very small amounts of water (brine). This liquid was postulated to be held only within the small pockets of the salt crystals themselves (intragranular). Later research, however, showed that the brine was also situated in the interstices of the individual crystals (intergranular), or it saturated very thin and discontinuous pockets and layers of clay.

This is the fluid that has been seen at the WIPP in the form of brine seeps. These studies showed that the brine content of the Salado may be approximately 2 percent by volume. The question of brine inflow and formation permeability is discussed in more detail in the next section.

area, are not directly relevant to the Agency's decision on a no-migration variance, even for permanent disposal. If contaminants pass beyond the Salado at greater than health-based levels, migration has occurred regardless of the fate of the contaminants in the Rustler formation.

5. Geologic Stability

The geologic stability of the WIPP site is a key element in any no-migration finding for long-term disposal at the repository. In the course of its review of DOE's petition, EPA addressed a number of questions related to site stability, the most important of which are brine inflow into the facility, potential for dissolution of the Salado Formation, seismicity, and the occurrence of maker beds in the Salado Formation. These questions are discussed below.

a. *Brine inflow.* There are two main potential sources for brine infiltration into the repository: Leakage from the Rustler formation above the WIPP and brine inflow from the Salado Formation into the WIPP.

While there has been some leakage from the Rustler Formation down each of the four WIPP shafts into the repository, the leakage rate does not exceed 0.06 liters per second, even when the shaft is unlined and no effort is made to correct the situation. This is not considered a problem with respect to the overall integrity of the Salado, but did lead to inflow of water into the facility. As a result, the WIPP shafts have been concrete-lined and grouted through the Rustler Formation, successfully eliminating the inflow into the shafts. This will be adequate (with proper maintenance) to control leakage from the Rustler over the operating life of the facility, at which time the shaft seals will be constructed. Therefore, the shafts do not contribute fluid to the repository, and thus do not threaten the unit through dissolution or provide a driving force for the transport of hazardous constituents from the underground.

Underground experience with the WIPP has also allowed more information to be gathered on the occurrence and movement of brine within the Salado. The movement of brine in the area immediately surrounding the repository (the disturbed rock zone) has consisted of small, low flow "weeps" that commonly develop on the walls and ceiling of an excavation shortly after the mining of an area. It has been observed that the weeps generally occur at random intervals along planes of heterogeneity within the repository, which means along clay and anhydrite seams found within the Salado. Only rarely does the inflow from a particular weep exceed the evaporation rate of the mine ventilation. In this case, the small amounts of brine will accumulate on the salt surface (usually at a rate of a few tenths of a milliliter per day) until the

flow from the weep diminishes, which usually occurs within a few months. The current view, accepted by EPA, is that brine movement into the repository is from the disturbed rock zone, and may be the result of stress-driven flow, with little or no contribution of flow from the far-field (which is the area beyond the zone affected by the underground workings). The fluid inflow question is an important one because brine is a key factor in gas generation, which is partially caused by the corrosion of the waste containers. Gas generation may affect the amount of time required for creep closure of the facility, and, if gas pressure is sufficient, it could also fracture surrounding walls or seals. Gas may also generate enough pressure to drive liquid out of the repository. (The question of gas generation is discussed later in this section.)

Because of these uncertainties, DOE has developed several conceptual models to predict brine movement within the Salado Formation. One model is based on far-field Darcy flow. It assumes that the Salado is hydraulically saturated in the far-field, that fluid flow is the controlling or limiting factor in the long term, and that fluid flow can be modeled effectively through the Darcy equation. (Darcy flow means that fluid flow is directly proportional to the pressure gradient, even when these gradients are very low.) The other concept for modeling the Salado assumes that Darcy permeability is valid only in those regions that have been significantly disturbed. In this approach, the far-field Salado permeability would be essentially zero under any pressure gradient, and brine would flow into or out of the WIPP (along with any hazardous constituents) only in response to the formation of a disturbed rock zone in which deformation of the halite produced interconnected porosity. A third model, which falls between these two approaches, assumes that there is some interconnected porosity within the Salado even under undisturbed conditions, and that fluid flow would take place in the near field in the absence of mechanical disturbance, but there would be no far-field fluid flow due to the absence of sufficient gradients.

Currently it is not certain that the different models of fluid flow within the Salado have significantly different impacts to the long-term behavior of the repository. In general, interpretations assuming Darcy flow in the far-field are conservative in that they do not result in a zero far-field flow rate and do not indicate maximum amounts of brine

inflow. Based on the models, however, DOE estimates that the brine inflow might total 40.6 m³ in 200 years, the estimated date by which the repository will be closed. This is a relatively small volume of liquid, representing 1.2 percent of the initial room volume. DOE believes that this amount of brine would be absorbed by salt backfill that will be placed around the waste.

To verify these results, DOE has scheduled Salado Formation fluid flow behavior studies for the test period at the WIPP; during these studies, DOE will validate the models against in-situ data, and will evaluate the fluid flow characteristics of the Salado in the shafts and in the salt surrounding the disposal rooms.

During the test phase, DOE will also refine the current understanding of the hydraulic characteristics of the Salado Formation, including: (1) The state of the hydraulic saturation in the far-field; (2) the driving forces for fluid flow; and (3) the relevant flow paths. As a result of these studies, DOE will obtain a better understanding of the long-term rates of brine inflow, and the long-term fate of wastes placed in the repository.

b. *Seismicity.* The WIPP site is located in an area of low seismic risk. The possibility is extremely low that faulting at the site is of a magnitude that could significantly affect site integrity. Geophysical investigations performed at the site show that no major faults occur in the area, and that those minor faults that are present do not appear physically to displace repository-horizon strata. The Agency agrees with the conclusion presented by the petitioner that regional tectonic activity is not an issue in terms of maintaining repository integrity.

c. *Dissolution features.* Because halite of the Salado formation is soluble in waters that are undersaturated with respect to the minerals in halite, removal of salt surrounding the repository by dissolution could affect repository performance and provide a route of migration out of the facility. In reviewing the potential for dissolution at the WIPP, EPA considered: (1) The influence of a dissolution front at nearby Nash Draw; (2) the possibility of shallow dissolution at the WIPP; (3) the likelihood of climatic changes affecting the hydrologic system, including the dissolution rate; and (4) the effect of deep-seated dissolution on repository performance and the origin of "breccia pipes" found near WIPP.

The nearest major geomorphic feature to the WIPP is Nash Draw, which is approximately eight kilometers northwest of the site. Nash Draw is an undrained physiographic depression

which probably developed as a result of differential dissolution of the anhydrite, gypsum, and halite beds of the Rustler and Upper Salado Formations. It is believed that dissolution on top of the massive Salado Formation produced a uniform lowering of the land surface within Nash Draw, while surficial features were produced and modified by dissolution of the Rustler Formation. The dissolution process also produced individual sink holes within Nash Draw, which vary in size from a few tens of meters to approximately two kilometers across. There are also very small sinkholes elsewhere in the area.

The shallow dissolution features in the WIPP area were formed during wetter climatic periods, primarily during the formation of the Pleistocene Gatuna Formation. Even during the period of greatest dissolution, only units within approximately 75 meters of the surface were affected. Shallow dissolution can only become a major process in the Salado, which is over 250 meters from the ground surface, if large quantities of halite-unsaturated water gain access to the Rustler Formation. Several factors will inhibit this process. The geologic units above the Salado are confining layers with transmissivities so low as to prevent recharge of surface water. Since the Rustler/Salado contact contains water that is saturated with respect to halite, it is not capable of dissolving additional halite. Lastly, the head-gradient from the Rustler/Salado contact is upward through the Rustler, which means that if water did exist and flow through this area, it would flow away from the Salado.

Significant increases in precipitation in the area of the WIPP could in theory increase the likelihood of surface dissolution. Data, however, indicate that the Quaternary climate of the past 500,000 years has for the most part remained semi-arid, with limited periods of increased precipitation. For example, the Mescalero Caliche, a type of formation characteristics of warm, semi-arid climates, has remained intact since its formation approximately 500,000 years ago; its continued presence is evidence that the climate has been relatively dry since its formation. As part of the performance assessment, DOE is studying further the possible effects of significant climatic changes on the WIPP.

Another type of dissolution feature found in the region is breccia pipes, or dome-like features of fractured rock. Four of these domal features occur in the immediate vicinity of the WIPP area. Two of these have been drilled and tested. These features appear to be the result of localized, deep-seated

dissolution wherein a void is created and overlying material collapses into the void. In the Delaware Basin, these breccia pipes form where soluble units overlie the Capitan Reef aquifer system. The pipes are formed by dissolution of the rock and the subsequent collapse of overlying beds, followed by differential solution of upper units, producing subsidence of ground around the collapsed pipe and creating a brecciated "domal" structure. There are two proposed scenarios for collapse: formation of a cavern inside the Capitan and dissolution and collapse of overlying units, or influx of water to the Salado from an outside source through fractures, resulting in Salado dissolution and collapse. EPA agrees with DOE in its conclusion that formation of these features will not affect the WIPP site because the Capitan Formation, necessary as a fluid source for dissolution, does not underlie the WIPP site.

d. *Occurrence and significance of marker beds.* The occurrence of 46 correlatable marker beds throughout the Salado indicates that the formation exhibits lateral continuity. Geologic mapping within the repository and shafts further supports this contention.

The WIPP repository is bounded by two marker beds (MB), an upper MB 138 and an underlying MB 139. Marker Bed 139 is located approximately 1.5 meters below the floor of the repository, and is composed by anhydrite, polyhalite, and halite. It varies in thickness from 0.3 to 1.3 meters, with an average thickness of 0.8 meter. The bed is fractured in the area below the repository as a result of the excavation of the repository. This marker bed is a potential contaminant migration pathway if fluids/gases were to exist in sufficient quantities to allow a driving force. DOE will review the possible role of Marker Bed 139 during the test phase, and will evaluate the need for specific approaches designed to control migration through the bed, including grouting and excavation of the fractured portions.

Marker Bed 138 lies approximately 9 to 10 meters above the repository and is composed of microcrystalline, partly laminated anhydrite that contains scattered halite growths. This bed is typically 0.25 meters thick, and has a very thin clay seam at the base.

Detailed assessment of marker beds surrounding the repository is important because these beds may act as parting surfaces during repository closure and may also serve as fluid migration pathways. DOE is conducting a number of studies to provide a full

understanding of the significance of these marker beds with respect to repository performance. The role of these beds and how the performance assessment will address outstanding issues such as fluid migration pathways are discussed later in this notice.

e. Ground-water modeling. In its non-migration variance petition, DOE provided the results of ground-water modeling that address the possible migration of hazardous constituents in the Salado Formation. The modeled pathway was one in which wastes moved downward from the waste storage panels, through the underlying salt, and into Marker Bed 139. Waste then moved laterally through this bed to the vertical shafts and upward through the seals and salt backfill within the shaft. DOE modeled this scenario using the SWIFT III code, a widely accepted code used to assess contaminant transport underground, and made very conservative assumptions—for example, one-dimensional flow, constant concentration source of 100 percent solubility, high longitudinal dispersivities, and no retardation or attenuation of wastes.

Results of the SWIFT III modeling indicate that the maximum distance from the source of a 10 ppt (part per trillion) concentration level is 350 meters after 10,000 years, assuming a dispersivity value of 10. This is significant, because the 10 ppt "front" would not have reached the sealed shafts by 10,000 years, and would still be over 400 meters from the top of the Salado Formation. Even with an unrealistic dispersivity value of 100, and 10 ppt contaminant front would still be 240 meters from the top of the Salado.

These results indicate that if the enhanced permeability of the marker bed is limited to the area around the disturbed rock zone, and the permeabilities of the constructed seals are low, contaminants will not migrate vertically up the shaft beyond the unit boundary under the modeled scenario and within the period of the model. If significant fracturing of rock were to occur or the seals were to fail, however, more extensive migration might occur. Although DOE considers these conditions unlikely, it will evaluate them during the test phase.

G. Repository Performance

1. Construction and Maintenance of the Repository

The WIPP repository was excavated according to accepted industry techniques, and has been under Mine Safety and Health Administration (MSHA) oversight and inspection since

1987. The basic mine design is "room and pillar," in which large rooms are excavated from the salt bed and the structural support is provided by the intact pillars of salt that remain. The width of the pillars is determined by the structural properties of the in-situ material. During and after construction, some fracturing of the repository walls has been observed. As a result, rock bolts have been used extensively throughout the underground openings. These bolts retard fracturing and are used in areas of the mine that will remain open for extended periods of time, such as the waste unloading areas and the main access drifts. Roofs of many high traffic areas are pattern bolted for extra safety. Both resin and mechanical bolts are used in most areas. The bolts are tested to meet MSHA standards by MSHA-qualified personnel.

The room and pillar type of excavation is used in various mining activities, such as anthracite and potash mining. In fact, much structural information for the WIPP repository was derived from the potash industry experience from mining the Salado Formation. As a result, the Agency is satisfied with the procedures used by DOE with respect to the basic construction of the WIPP underground. The Agency believes that DOE has demonstrated, with reasonable certainty, the stability of the WIPP repository during the period of the proposed variance.

2. Closure Mechanisms

One of the most attractive characteristics of bedded salt is its plasticity, which enables it over time to flow or "creep," a process that enables fractures in the salt to heal at feasible repository depths. The National Academy of Sciences' original recommendation of salt as a repository medium was based in part on the assumption that the salt would creep to closure and that the salt pillars (or the room and pillar concept) would provide sufficient support to prevent premature collapse and failure of the repository.

There are four major elements of the closure mechanism for the WIPP underground: (1) Brine inflow (discussed earlier); (2) rate of closure of the repository; (3) the disturbed rock zone and Marker Bed 139; and (4) gas generation (which is discussed in the next section).

The observed closure behavior of the openings at the facility is more rapid and more complex than originally anticipated. The total macroscopic wall-to-wall and ceiling-to-floor closure to date have proved, at least initially, to be

approximately three times the predicted value. Under the most favorable conditions, the more rapid closure would result in time estimates of 60 to 200 years for closure to a near final state, depending on the initial waste and backfill density, brine influx rate, gas generation rate, and creep closure rate. One of the tasks of the performance assessment is to ascertain in more detail the specific mechanisms and timing of repository closure.

EPA believes that the creep closure process will be a step-functioned phenomena, in which slabs of halite, or variable size, will break along fractures and fall into the remaining open space of the mine, or will be involved in floor heave. These fractures will occur mainly along pre-existing microfractures, incipient joints, and bedding planes, following the excavation of underground openings at the WIPP facility. These are the fractures that make up the disturbed rock zone, which is a zone of rock in which mechanical properties have changed in response to the excavation. The term "near-field" describes the rock within the disturbed rock zone, and "far-field" describes the rock outside the zone. The disturbed rock zone extends approximately 1 to 5 meters from the excavation.

Underground observations of the disturbed rock zone indicate that coherent creep of the Salado Formation outside of the disturbed rock zone is the dominant structural process involved in the closure of the repository. The disturbed rock zone, however, may serve as a sink for some or all of the brine that seeps into the rooms and shafts. It may also enlarge the effective room dimensions by moving the area at or near atmospheric pressure to its outer limits. This would increase the time required for complete closure of the repository openings, allowing the potential for increased brine accumulation. It has also been suggested that, if the fractures in the disturbed rock zone or Marker Bed 139 in particular do not heal, they might serve as a route for migration for hazardous waste or radionuclides. A major portion of the test phase will be devoted to exploring the extent and behavior of the disturbed rock zone.

3. Gas Generation in Waste Disposal Rooms

Microbial and radiolytic decomposition of the waste and corrosion of containers will generate a large quantity of gas. This may result in the pressurization of the waste disposal rooms, particularly if the rate of gas production exceeds the rate at which

gas could be consumed in chemical reactions or be diffused into the host rock. This pressurization could become a driving force for the migration of radionuclides and/or hazardous constituents. If gas pressure exceeds lithostatic pressure, it may result in near-field fracturing of the Salado Formation, impede the structural closing of the repository, or result in gases or brines escaping around the shaft and panel seals. (Seal design will be discussed in section IV.H.) While this is a question that DOE is addressing as part of the performance assessment, it will not be a concern during the test phase.

From the viewpoint of long-term performance of the WIPP, the fundamental questions are whether brine inflow will be sufficient to saturate backfill, waste, and the disturbed rock zone, either before or after compaction of the repository to the final mechanical state, and whether the far-field permeability will be sufficient to dissipate brine and/or gas pressures at or near the final repository state at some fluid pressure below lithostatic pressure.

The impacts of potential gas generation cannot be fully assessed at this time. The most important factor with regard to impacts at the site is the rate at which gases will be produced. To some extent, gases may be absorbed into the Salado Formation. The results of experiments performed during the test phase will help quantify the rate of gas generation within the repository, and will determine if any additional engineering modifications or safeguards are needed to meet the long-term performance goals.

4. Evaluation of Engineered Alternatives

The potential for releases as a result of the interactions among wastes, brine, and gas at the WIPP has led DOE to consider whether some type of waste treatment process or some other system modification may be required. Several engineered components might be added to the system to mitigate the effects of gas generation, wastes might be treated before placement to reduce the amount of gas generated, or other measures taken. DOE formed a task force to review and evaluate the technical effectiveness of waste, backfill, and facility design modifications in mitigating problems associated with gas generation. Engineered alternatives that might provide improved performance will be included in the WIPP experimental programs.

H. Seal Design

The WIPP repository is connected to the ground surface by four mine shafts ranging in diameter from 3.7 meters to 6.1 meters. These shafts are used to remove excavated salt, provide fresh air intake, provide for exhaust air outflow, and handle waste, personnel and construction equipment. At site closure, these shafts must be filled and plugged to prevent the escape of hazardous constituents. In addition, each panel and drift of the repository itself must eventually be sealed to prevent migration of wastes to the shaft seals and minimize release in the event of a penetration. Since DOE will not be installing permanent seals during the test phase, the variance proposed today does not require an approved final design. However, for the Agency to be assured that an implementable design will be available at the end of the test phase, it has required DOE to provide in its petition a reference design and a plan for development of a detailed design.

The primary function of the seal system is to limit the release of hazardous constituents (and radionuclides) through the shafts and past the unit boundary. For the purpose of the no-migration petition, hazardous constituents must not escape from the seal system in excess of health-based levels, and the seals must be capable of limiting the inflow of ground water from overlying water-bearing zones. Furthermore, the seals must function effectively for as long as the waste remains hazardous.

In its petition, DOE has developed a two-phase reference seal design. The first phase provides a "short-term" barrier to fluid flow and is designed to function for at least 100 years. The purpose of this "short-term" barrier is to provide containment until the long-term barrier of compressed salt consolidates. The second phase provides the long-term barrier to fluid flow and is expected to become effective at approximately the 100-year time frame.

DOE has chosen salt as the principal long-term barrier to fluid flow from the repository. Salt has been selected because: (1) It is compatible with the surrounding host rock, providing long-term mechanical and chemical stability unmatched by any other material considered; (2) it is emplaceable with conventional techniques; and (3) emplaced crushed salt is expected to reconsolidate as a result of creep closure of the mine and shaft openings, resulting in a fluid conductivity approaching that of the host rock salt.

Laboratory testing and numerical modeling have demonstrated the

feasibility of rock salt as the long-term seal; however, complete consolidation of the salt columns within the shafts and mine drifts is expected to take up to 100 years. Therefore, DOE has proposed a short-term seal system to provide waste containment during the period of salt seal consolidation.

The materials chosen for the short-term seals must satisfy the following criteria: (1) They must provide an effective fluid barrier; (2) they must be emplaceable in the mine environment; (3) they must provide mechanical and chemical stability for at least 100 years; and (4) they must be compatible with and capable of containing the hazardous waste constituents found in the TRU wastes. (Although the Senate legislative history indicates that the no-migration applicant must "sustain the burden of meeting this standard without the use of artificial barriers such as liners" (S. Rep. No. 284 at 15), EPA does not read this language as precluding assessment of artificial barriers for temporary containment. The concern expressed in the legislative history is that artificial barriers do not provide indefinite containment. Since the artificial seals at the WIPP would only provide a barrier to migration during the temporary period (i.e., 100 years) between closure and consolidation of the permanent salt seal, the concern expressed in the legislative history does not appear to be presented.)

DOE's ongoing seal development program has evaluated a number of seal materials for use in short-term seals, including clays, grouts, concretes, and asphalt. After substantial investigation, including laboratory and small-scale field testing, literature review, and modeling, DOE has proposed a multicomponent reference or conceptual design for the short-term seals. The reference seal materials chosen were concrete and sodium bentonite (a type of clay). They are expected to satisfy the above criteria, although their effectiveness will be the subject of further study during the test phase.

Within the repository shafts there will be three major seal subsystems—the water-bearing zone seal system, the upper shaft seal system, and the lower shaft seal system. The water-bearing zone and upper shaft seal systems are located in the Rustler Formation, while the lower shaft seal system is in the Salado Formation. The water-bearing zone seal system is composed of a 4-meter-thick compacted sodium bentonite seal sandwiched between massive 10-meter-thick concrete bulkheads. The upper shaft seal system is composed of three 4-meter-thick sodium bentonite

seals, each sandwiched between massive concrete bulkheads 10 meters in thickness. The redundant nature of the approximately 60-meter-long shaft system in the Salado Formation can be expected to assure that water-bearing zones are isolated from the shafts.

The lower shaft seal system, which will be in the Salado formation, is expected to function for the long term. This seal system will be composed primarily of compacted crushed salt, ultimately returning the shaft area to a state of permeability to fluids comparable to that of intact host rock salt. The expected height of the final column of reconsolidated salt in each of the four shafts is approximately 200 meters.

A short-term seal will be installed at the top of the Salado formation, above the compacted crushed salt column. The seal will be composed, from top to bottom, of (1) a 10-meter-thick concrete bulkhead, (2) a 4-meter-thick compacted sodium bentonite seal, (3) a 5-meter-thick preconsolidated crushed salt core, (4) a 4-meter-thick compacted sodium bentonite seal, and (5) a 10-meter-thick concrete bulkhead. This upper component will provide redundant protection of the preconsolidated salt from infiltration by water from strata above the Salado formation. The concrete used in this seal, and all other seals within the Salado formation, will be salt saturated to increase compatibility with the host rock. At the bottom of each shaft another short-term seal similar to the one emplaced at the top of the Salado formation will provide a base for the shaft's preconsolidated salt seal, and will limit the movement of fluids between the salt column and the repository itself. A redundant seal similar to the two mentioned above is also proposed to be located within the Salado formation just below the Vaca Triste marker bed, which is a halitic siltstone approximately 240 meters above the repository horizon.

DOE also intends to place a series of horizontal seals within the drifts and panels of the repository itself, and along the four long North-South access drifts leading to the panels. The purpose of these seals is to provide an interval within each panel that has a permeability to fluids comparable to the permeability of undisturbed host rock salt. These seals will be composed of a preconsolidated salt core (either tamped salt or salt block) with 10-meter concrete bulkheads at each end. Considerable overexcavation is anticipated within the drift and panel seal areas just prior to placement of the seals to reduce the disturbed rock zone

and remove areas of Marker Bed 139, which might permit migration of the waste constituents. Swelling clays are not now included in the panel and drift seal design.⁷

In its petition, DOE provided a reference design for this seal system. A significant portion of test phase activities is devoted to seal system development based on the reference design. To characterize seal system behavior and performance more fully, DOE is conducting an in-situ and laboratory testing, analysis, and design program. The primary activities or issues addressed by the program are:

1. *Geochemical stability.* Additional laboratory work is necessary to confirm that short-term components will perform adequately throughout their design life. During the test phase, DOE will evaluate the potential for chemical degradation for the seal materials as a result of interaction with the hazardous waste (and other waste) to be disposed of in the repository.

2. *Crushed salt consolidation.* The effect of consolidation on crushed salt properties requires verification with further laboratory tests, including an expansion of the testing program to include brine-saturated crushed salt. Consolidation rates of crushed salt under deviatoric loading will be determined. Measurements will then be made on samples saturated with brine to determine how fluid-filled pores inhibit compaction. The extent to which reconsolidation is accelerated by moisture will be measured in tests on samples containing controlled quantities of added brine. The relationship between reconsolidation, density, and permeability will also be determined.

3. *Cementitious materials development.* DOE will also investigate anhydrite bonding concrete, principally to support the development of material to seal Marker Bed 139 as well as anhydrite markerbeds of less importance. Testing of previously-developed concretes will continue.

4. *Crushed-salt consolidation modeling.* DOE will update the numerical crushed salt consolidation model to include the latest data from laboratory tests. Calculations will be made of crushed salt consolidation in proposed seal excavation shapes to guide the choice of seal shapes for rapid consolidation to high density and low permeability.

⁷ In addition to isolating each panel from the rest of the repository, the panel seals will also function as a barrier for backfilled salt placed in each panel. The backfilled salt and other absorbent or getter material will aid in the encapsulation of the waste material, absorb brine infiltrating individual rooms, and reduce the time necessary for final closure.

5. *Seal system design integration.* An architectural/engineering contractor will prepare a design for the WIPP sealing system after evaluating the results of the testing and model development activities. The design will provide the basis for preparing a WIPP construction design.

6. *Small- and large-scale seal tests.* DOE has placed a number of vertical and horizontal bore holes in the experimental area of the repository. Various candidate seal materials have been placed in these boreholes to provide in-situ data on their efficacy. To more fully simulate the effects of the disturbed rock zone and to test emplacement techniques, DOE will emplace large-scale seals during the test phase. These seals will simulate typical panel seals, and will be composed of crushed salt or salt blocks and concrete.⁸

The Agency believes that DOE's seals development program, as outlined in the no-migration variance, is appropriate. The reference materials currently selected exhibit key properties of mechanical and chemical stability, emplaceability, and hydraulic impermeability. The overall seal design is redundant and calls for seals in critical portions of the repository and shafts. The test phase will address outstanding data needs, verify existing data, and develop new models, as well as improve models developed previously. Information developed during the test phase will be used to develop a preliminary seal design suitable for a construction design.

The Agency solicits comments on DOE's current reference design as well as DOE's program for developing a preliminary seal design during the test phase.

1. Waste Characterization

1. Waste Sources and Types

The TRU wastes intended for emplacement in the WIPP are generated at the ten DOE facilities involved in production operations and research and development activities related to national defense. Many of the processes conducted at the DOE generating facilities are typical manufacturing operations—machining, degreasing, foundry operations, assembly, laboratory operations, etc.; the major difference is the use of radioactive

⁸ DOE is also continuing to participate in international salt seal development programs. Advanced programs with salt, bentonite, and concrete are being conducted concurrent to the DOE program in Sweden, Canada, Germany, and the Netherlands.

materials to produce defense-related materials. The wastes that are generated from these processes include: (1) Laboratory hardware such as glassware, ring stands, piping, and other metal structures, (2) cellulosic materials such as towels, tissues, and wiping cloths, (3) protective gloves and clothing, (4) inorganic process sludges, many of which are stabilized, (5) various plastic, rubbers, and resins, (6) stabilized organic wastes, and (7) worn out or contaminated equipment and tools. The

specific DOE facilities that generate these wastes are:

Rocky Flats Plant, Golden, CO
Idaho National Engineering Laboratory, Idaho Falls, ID
Los Alamos National Laboratory, Los Alamos, NM
Argonne National Laboratory-East, Argonne, IL
Savannah River Plant, Aiken, SC
Oak Ridge National Laboratory, Oak Ridge, TN
Hanford Reservation, Richland, WA
Mound Plant, Miamisburg, OH

Lawrence Livermore National Laboratory, Livermore, CA
Nevada Test Site, Mercury, NV

While the wastes originate from numerous sources within each facility, they have been categorized into four general waste types based upon their physical form and primary chemical content (i.e., organic or inorganic). These types, an example of each, and the approximate volumes of waste they represent, are depicted in Table 1.

TABLE 1—VOLUMES OF WASTE BY WASTE TYPE

Waste type	Examples	Volumes (ft ³) ¹
Solidified aqueous or homogeneous inorganic solids (Waste Type I)	Wastewater Treatment Sludges; Cemented inorganic process solids; Solidified aqueous wastes.	800,000
Solid inorganics (Waste Type II)	Graphite waste; Metal waste—tools, equipment; Glass waste; Pyrochemical salt waste.	850,000
Solid organics (Waste Type III)	Combustible waste—paper, rags, soft plastics, cloth coveralls; Filter wastes; Leaded rubber; Exchange resins.	1,750,000
Solidified organics (Waste Type IV)	Solidified lab waste; Solidified solvents.	100,000
Total		3,500,000

¹ The volumes reflect previously generated wastes plus the expected volumes that will be generated during the operating life of the WIPP facility.

As can be seen, the largest percentage (approximately 75%) of waste is solid organic- and inorganic-types wastes—paper, protective clothing, tools, equipment, etc.—while solidified organics (the waste that is expected to contain the highest amount of toxicants) will comprise a relatively small percentage of waste (approximately 3 percent).

All wastes to be sent to the WIPP must comply with the Waste Acceptance Criteria (WAC) established by the DOE WIPP Project Office. (These criteria are normally referred to as the WIPP-WAC.) These criteria specify requirements regarding the physical, chemical, and radiological characteristics of the wastes, as well as package labeling requirements. For example, the WIPP-WAC prohibits wastes containing free liquids except in residual amounts.⁹ Therefore, wastes

destined for emplacement at the WIPP must be in a solid or solidified form. Similarly, corrosive materials and nonradioactive pyrophorics are also prohibited by the WIPP-WAC. Therefore, all corrosive materials must be neutralized or processed to render them noncorrosive, and all nonnuclide pyrophorics must be stabilized or processed to render them nonhazardous. The WIPP-WAC also place limits on the radionuclide levels allowed in individual waste packages. Compliance with the WAC is verified by a combination of process controls: visual inspection during waste packaging, real-time radiography, nondestructive radiological assay, and waste sampling. DOE requires that each waste generator or storage site certify that all wastes meet the WIPP-WAC requirements prior to being sent to the WIPP.

2. Waste Characterization Data

DOE's characterization of the RCRA hazardous constituents in the TRU wastes to be emplaced at the WIPP facility is primarily based upon best engineering judgment, considering the processes from which the wastestreams originate, the materials used in each process, and the technologies used in treating the wastes. In compiling these data, DOE grouped wastes together into Content Codes which comprise wastes of similar types (e.g., combustibles, metals, etc.). Each Content Code indicates where the waste is stored or generated and consists of one or more Item Description Codes (IDCs). These

IDCs are site-assigned codes for wastes; they represent more detailed waste descriptions than are contained in the Content Codes. For example, Content Code RF 116 represents combustible wastes currently being generated at Rocky Flats. This Content Code is composed of IDC 831 (dry combustibles), IDC 832 (wet combustibles), and IDC 833 (plastics). (The Content Code 116 wastes previously generated at Rocky Flats and currently stored at the Idaho National Engineering Laboratory are designated as ID 116.)

In support of its petition, DOE provided information on each of 138 Content Codes. For the various codes, the information was provided in two parts. The first part contains a description of the waste in the Content Code and its corresponding IDCs. This description includes flow diagrams and narrative descriptions of the processes which generate the waste, as well as identification of the RCRA hazardous constituents that are used in the process and estimated concentrations for each of the hazardous constituents expected in the waste.

In using process knowledge to establish the identity and concentration of RCRA hazardous constituents in particular wastestreams, DOE assumed that, if a constituent was used in a process contributing to a wastestream, then the constituent would be present in the treated waste. DOE notes that this is a conservative approach since many of

⁹ One of the concerns expressed by EPA over the long-term fate of the wastes is the potential for liquids contained in the wastes to be released due to increased pressure after the closure of the repository and, thus, creating the potential for movement of hazardous constituents. As a result of this concern, DOE provided information which indicates that the potential for liquids to be released from the solidified inorganic process sludges (Waste Type I) during the closure period is minimal. Similar assurance needs to be provided for the solidified organic sludges and the wastes that are stabilized by the addition of absorbent. Since the repository will remain open during the testing period, the potentials for liquid release is not a concern during the testing period. However, additional data will be necessary before the Agency can reach a decision on the operational and post-operational periods.

the identified constituents (i.e., the solvents) are very volatile and are likely not to be present in the wastestreams, or are present at very low levels.

The second part of the Content-Code-specific information references available analytical data; these data, DOE argues, support its conclusions on waste composition based upon process knowledge. These data include results from total volatile organic analysis, total metals analysis, Toxicity Characteristic Leaching Procedure (TCLP) tests for organics and metals, Extraction Procedure (EP) tests for metals, and headspace gas analysis for organics. Except in a few cases, all the analytical results represent wastes that were generated at the Rocky Flats Plant, the Idaho National Engineering Laboratory, or the Los Alamos National Laboratory.

Total volatile analysis data were reported for 15 samples. Thirteen of the samples represented Waste Type I and two represented Waste Type IV. Total metals analysis data were reported for six samples. These samples represented Waste Type I and were also tested for the RCRA hazardous waste characteristics of ignitability, corrosivity, and reactivity.

TCLP results were reported for ten samples, all representing Waste Type I. Nine of the samples were analyzed for organics and metals while one was analyzed for organics only. EP toxicity test results were reported for fifteen

samples. All these samples represented Waste Type I.

Two sets of gas headspace analysis results were provided. In the first set, results were reported for 22 samples. Ten samples represented Waste Type I; five samples represented Waste Type II; three samples represented Waste Type III; and four samples represented Waste Type IV. In the second set, headspace analysis results were reported for 209 samples.¹⁰ Thirty-two samples represented Waste Type I; 78 samples represented Waste Type II; 77 samples represented Waste Type III; and 23 samples represented Waste Type IV. In both sets of headspace data, the samples were analyzed for numerous gases, including nine organics.

It should be noted that one of the goals of DOE's waste characterization program is to ensure that the wastes used in the experimental or test phase are representative of all of the wastes that will be placed in the WIPP facility during its operational period. DOE believes that wastes from Rocky Flats (newly generated) and the Idaho National Engineering Laboratory (stored and newly generated) will be representative of wastes from the other

¹⁰ Forty-one gas headspace samples were also analyzed for wastes generated at the Los Alamos National Laboratory. These analyses indicate that no RCRA VOCs were detected in the headspace.

facilities because Rocky Flats will generate 46% of the newly generated waste over the next 26 years and INEL contains 62% of the stored waste that will be shipped to the WIPP facility, much of which was generated at Rocky Flats. DOE further notes that Rocky Flats produces wastes described by most of the Content Codes.

3. Summary of Waste Characterization Data

The RCRA hazardous constituents in the wastes destined for the WIPP are certain toxic metals and both halogenated and nonhalogenated solvents. Based upon the process information and analytical data, DOE compiled a table (Table 2-1 of the Waste Analysis Plan) which identifies the RCRA hazardous constituents and estimated concentrations expected to be present in each Content Code. The maximum estimated concentrations of the predominant hazardous constituents are presented in Table 2.

The toxic metals cadmium, chromium, lead, mercury, selenium, and silver are predominantly present in discarded tools and equipment, solidified inorganic sludges, and cemented laboratory liquids. Lead is the most prevalent EP metal and is present mostly in lead-lined gloves, aprons, and gloveboxes; lead bricks; and piping.

TABLE 2—MAXIMUM ESTIMATED CONCENTRATION VALUES

Hazardous Constituent ¹	Waste Type I	Waste Type II	Waste Type III	Waste Type IV
Acetone			T	
Butanol	T		T2	T
Carbon tetrachloride	T		T	D
Methanol	T	T	T2	T
Methylene chloride	T	T	T	M
Tetrachloroethylene	T			T
1,1,1-Trichloroethane	T	T	T	D
Trichloroethylene	T		T	M
1,1,2-Trichloro-1,2,2-trifluoroethane	T	T	T	M
Xylene	T		T	M
Cadmium	T	T2	D	T
Chromium	T	T	T	T3
Lead	T	D	D	T
Mercury	T	T1	T	
Selenium	T2	T2		
Silver	T2	T2	T	

¹The following chemicals in this table are defined in the hazardous waste regulations solely for their ignitability characteristics: (1) Acetone, (2) butanol, (3) methanol, and (4) xylene. The other chemicals identified in the table are defined as toxic in the hazardous waste regulations.

Key: T3 = <1 ppm; T2 = Few ppm; T = <0.1%; T = <1%; M = 1-10%; D = >10%.

The primary halogenated organic compounds identified as being present in the wastes are tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and 1,1,2-trichloro-1,2,2-trifluoroethane. These constituents are

regulated as hazardous under RCRA due to their toxicity. The compounds are commonly used as degreasing solvents to clean metal surfaces and to solubilize other compounds. As indicated in table 2, DOE estimates that halogenated organics are not present in any of the

Type I, II, or III wastestreams at greater than 1%.

The primary nonhalogenated organic compounds identified as being present in the wastes are xylene, acetone, methanol, and butanol. These constituents are regulated as hazardous

under RCRA due to their ignitability only. Like the halogenated compounds, these compounds are used as degreasers and solubilizers. As indicated in Table 2, DOE estimates that these constituents also are not present in any of the Type I, II, or III wastestream at greater than 1%.

4. DOE's Analysis of Waste Compatibility

DOE used the compositional data described above to perform analyses to demonstrate the compatibility of the various wastes to be emplaced in the WIPP. DOE first identified potential incompatibilities; it then analyzed the potential incompatibilities to determine whether or not they would actually occur. In performing these analyses, DOE considered wastes to be incompatible if the potential existed for any of the following reactions: Corrosion, explosion, heat generation, gas generation (flammable gases), pressure build-up (nonflammable gases), and toxic by-product generation.

To identify incompatibilities, DOE listed the materials and chemicals (with their estimated concentrations) contained in each Content Code according to 41 reaction groups (e.g., metals and compounds, caustics, etc.). That is, for each Content Code, all pertinent reaction groups were identified. DOE then identified all of the reaction group combinations that could occur within the same Content Code and between different Content Codes (assuming that wastes with different Content Codes are mixed).

DOE performed compatibility analyses for Rocky Flats wastes (both within each Content Code and across Content Codes) and for wastes across all sites. In analyzing compatibilities within each Rocky Flats Content Code, 19 potential incompatibilities were identified. DOE evaluated each of the 19 cases and concluded that the required processing (prior to placing the waste into the containers) would eliminate the potential incompatibility.

DOE's analysis of potential incompatibilities across Rocky Flats Content Codes were designed to simulate a scenario in which individual waste containers within TRUPACT-II containers were breached and the contents mixed. DOE identified six potential reactions due to incompatibilities. DOE discussed each of the potential incompatibilities and concluded that, based upon a more detailed analysis of the identity and concentration of constituents within the reaction groups, the reactions would not occur.

In its analysis of compatibility of wastes across all sites, DOE considered

reaction of wastes with brine as well as with wastes from other Content Codes. DOE identified 59 potential incompatibilities. After further evaluation, however, DOE concluded that the wastes would not result in a reaction.

5. Agency Analysis of Data

In comparing the process descriptions with DOE's judgments as to the identification of RCRA hazardous constituents in the wastes, the Agency believes that DOE's estimates to be reasonable in most instances. The Agency agrees with DOE's assertion that assuming all hazardous constituents associated with a process to be present in the resultant wastestreams provides for a conservative approach. Further, the process descriptions suggest that the hazardous solvent constituents are not expected to be present in the wastes in high concentrations,¹¹ except for Waste Type IV—Solidified Organics. (The Agency notes that Waste Type IV will account for only 3 percent of the wastes that are to be emplaced in the WIPP facility.) With respect to those wastes that contain toxic heavy metals, while these wastes may contain significant concentrations of certain metals (e.g., lead), the Agency believes that the potential for these constituents to leach from the waste (and escape into the environment) is minimal, considering the form of the waste.

While this information is an important basis for the Agency's conclusions, it should be noted that in certain instances DOE's judgments were not always correct. In particular, in a number of cases, DOE predicted that hazardous constituents would not be present in certain wastes; however, the analytical results for these wastes indicated that hazardous constituents were present, albeit in low concentrations. Therefore, the engineering judgments must be viewed in concert with other information (i.e., analytical data).

With respect to the analytical results, the Agency is concerned with the quality of DOE's analytical data. For most of the data, DOE has been able to provide little or no information as to sampling plans and sample handling procedures. Thus, the Agency is unable to evaluate the extent to which the

samples are representative of the wastes, although the Agency recognizes that analytical data was provided for all the various wastes generated at Rocky Flats and the Idaho National Engineering Laboratory. In addition, much of the data contain no indication as to whether appropriate quality assurance/quality control measures were employed. As a result of these shortcomings, the Agency believes that additional analytical data will be required before the Agency can consider DOE's petition for the operational and post-operational period. Nevertheless, the Agency believes that sufficient information was provided for DOE to proceed with testing during the five-year test phase. In particular, as is described later in today's notice, the concentrations at the unit boundaries (using DOE's waste characterization estimates) are expected to be well below health-based levels. Therefore, even if the characterization data underestimate the hazardous constituent concentrations by an order of magnitude, the boundary concentrations would still be expected to be below hazardous levels. In addition, during the test phase, the monitoring described in Section IV.K of today's notice will confirm that no migration of hazardous constituents occurs during this period. Should problems develop, the wastes will be retrievable.

The Agency has also evaluated DOE's analysis of waste compatibility. The Agency agrees with DOE that no incompatible reactions should occur as a result of possible waste mixing. The Agency reached this determination for Rocky Flats wastes (both within each Content Code and across Content Codes) and for waste across all DOE generator sites.

Finally, it should be noted that for DOE to demonstrate no migration for the operational and post-operational periods, it will be necessary for it to extrapolate information gained during the test phase to behavior of the wastes during the later phases. Thus, the Agency is proposing to require that DOE provide to the Agency the results of detailed waste characterization and analyses performed on the waste to be emplaced in the WIPP during the test phase (see Section V of today's notice); in addition, as already indicated, the Agency believes that during the test phase additional waste characterization data will need to be developed for those wastes to be emplaced during the operational phase. While DOE believes that the wastes to be used in the test phase (from Rocky Flats and Idaho National Engineering Laboratory, as

¹¹ While the data indicate that Waste Types I, II, and III may contain up to 1% of certain volatile organics, the Agency would expect that most of the wastes that contained these constituents (not every Content Code contained each of the hazardous constituents identified in Table 2) would contain them at much lower levels based on waste type, the volatility of these solvents, and the manner in which these wastes are generated. This point is to some extent confirmed by the analytical data.

described in section IV.I.3, above) are representative of the wastes to be emplaced in the WIPP, the Agency recognizes that variations in the composition of wastes from different facilities—even though the processes are similar—are not uncommon. The Agency therefore believes that additional waste analysis will be necessary to demonstrate more clearly that the wastes from Rocky Flats and Idaho National Engineering Laboratory that are to be emplaced in the WIPP during the test phase are, in fact, representative of all of the wastes scheduled for emplacement in the WIPP facility.

J. No-Migration Demonstration

During the test phase, DOE intends to conduct two types of in-situ tests involving mixed wastes: bin-scale and alcove tests. In the bin-scale experiments, waste will be placed in specially designed bins with various combinations of brine, backfill, and gas getter materials. In the alcove tests, drummed wastes will be placed in sealed alcoves. (These tests are described in more detail in section IV.L of this notice.) The Agency assessed the possible levels of hazardous volatile organic constituents at the unit boundary during these experiments for the organic solvents most commonly present in TRU mixed wastes. The proposed unit boundary for the air pathway is the point where the air exhaust shaft releases to the ambient environment at the WIPP. As discussed in section IV.K, air is the only plausible pathway during the test phase for migration from the land disposal unit.

In the bin-scale experiments, headspace gases will be vented into the bin discharge system whenever the bins become pressurized through a pressure relief valve installed on each bin. The gases will then be passed on to the exhaust shaft. Since the purpose of the experiments is to gather data on the gas generation potential for the various types of wastes intended for disposal at the WIPP, the rate of gas generation can only be estimated from data gathered in previous laboratory studies. In its review of the gas generation data, the Agency concluded that the possibility that health-based levels might be exceeded in the exhaust shaft could not be eliminated. Therefore, the DOE has provided for the inclusion of a carbon canister in the bin gas discharge system to remove any volatile organic constituents released from the bins. Given the uncertainty inherent in

conducting the experiments, the Agency agrees that such a control device is appropriate. (Although this part of the no-migration demonstration depends on the integrity of artificial containment mechanisms, EPA does not believe the use of air control devices for a temporary period (i.e., the operational period) precludes an approval of the no-migration petition. As noted earlier in the discussion of the temporary seals, EPA does not read the legislative history (S. Rep. No. 284 at 15) as precluding EPA from considering the integrity of artificial barriers during a limited period.)

To be assured that there is no migration above health-based levels, the Agency is proposing to require the carbon adsorption control device to be installed in the bin discharge system of each room be designed to achieve a control efficiency of at least 95 percent.¹² The Agency believes a 95 percent control efficiency is readily achievable by carbon adsorption systems (see 52 FR 3748, February 5, 1987). In addition, the Agency is proposing to require that certain records be maintained in the facility operating record to ensure that the above requirement is met and that the spent carbon (which will contain the hazardous constituents) will not be improperly regenerated or disposed. In particular, the following records would have to be kept in the facility operating record: (1) The date and time when the carbon in the control device is replaced with fresh carbon and when samples are collected for monitoring carbon breakthrough, along with records of the monitoring results; (2) engineering design analyses used to size the control device and to determine the frequency of carbon replacement; and (3) a signed certification that all carbon removed from the control device is regenerated or reactivated by a process that minimizes the release of organics to the atmosphere by means of a condenser, thermal vapor incinerator, catalytic incinerator, or similar emission control system; is incinerated in a device that meets the performance standards of 40 CFR part 264, subpart O; or is disposed in compliance with Federal and State regulations.

¹² While DOE has submitted a preliminary design of the carbon adsorption control device, the Agency has not been able to determine with the information provided what control efficiency the device will achieve. Therefore, EPA is proposing to require that the carbon adsorption control device be designed to achieve at least a level of 95 percent efficiency.

The Agency used for its assessment the concentrations of volatile organic compounds measured in the headspace of 209 drums and standard waste boxes sampled at random from waste form categories generated at the Rocky Flats Plant and stored at Idaho National Engineering Laboratory. The waste form categories when sampled were expected to comply with the requirements of the WIPP-WAC, although upon subsequent visual examination and radionuclide reanalysis DOE found only 179 of the original 209 to be WAC certifiable (after modifying the initial WAC assessment to allow a free liquid residual of up to 1 percent by volume). The Agency views the analytical results from these headspace samples as being semi-quantitative, for the reasons previously described in section IV.I of this notice.

The results of the Agency's assessment are shown in Table 3 below along with levels of regulatory concerns. The Agency conservatively assumed that both rooms reserved for the bin-scale experiments are filled to capacity. The capacity of each room is 120 bins; therefore, the total number of bins is 240. The Agency then assumed an average gas generation rate of 5 moles per drum per year, a figure the DOE characterizes as representing the upper bound of the range of credible gas generation rates (Test Plan: WIPP Bin-Scale CH TRU Waste Tests, January 1990; SAND89-0462). Each bin can hold the equivalent of 6 drum volumes of waste. Therefore, DOE's upper bound gas generation rate is equivalent to a total gas generation rate from all 240 experimental bins of 0.5 cubic meters per day.¹³ The DOE has specified the general ventilation rate through the repository as 425,000 cubic feet per minute which is equivalent to 17,000,000 cubic meters per day. This entire volume of air is exhausted at the exhaust shaft and is available to mix with any gases released from the bin discharge system. The resulting dilution factor at the exhaust shaft is 34,000,000. The dilution factor is applied to the average headspace concentrations, together with the control device efficiency, to calculate the concentration of constituents in the exhaust shaft.

¹³ The Agency notes that even if the gas generation rate is higher (e.g., 25 moles per drum per year), the concentrations at the unit boundary would still be below health-based levels, given the requirement for a carbon adsorption system with a 95 percent control efficiency.

TABLE 3—TEST PHASE COMPLIANCE POINT CONCENTRATIONS IN AIR

Constituents	Average headspace concentrations (g/m ³)	Compliance point concentrations (µg/m ³)	Levels of regulatory concern ¹ (µg/m ³)
Carbon tetrachloride.....	1.85	0.0027	0.03
Methylene chloride.....	0.47	0.00069	0.3
Trichloroethylene.....	0.70	0.0010	0.3
1,1,1-Trichloroethane.....	13.2	0.019	10,000
1,1,2-Trichloro-1,2,2-trifluoroethane.....	1.22	0.0018	30,000

¹ See "Docket Report on Health-based Regulatory Levels for Volatile Organic Compounds in TRU Mixed Wastes."

The compliance point concentrations (with the carbon adsorption control devices installed in the bin discharge system) are an order of magnitude below the level of regulatory concern for carbon tetrachloride and are two to seven orders of magnitude below any other level of regulatory concern. These represent the bin-scale experiments alone; however, the contribution of the alcoves is negligible by comparison. Although it would not be allowable under today's proposed action, DOE has provided data to show that even when 10 percent of the wastes, equivalent to 85,000 drums, are emplaced in the repository prior to sealing of the rooms, the concentrations in the exhaust shaft would be two to eight orders of magnitude below the levels of regulatory concern. Since the alcove experiments involve only 3,850 drums (more than a factor of 20 fewer drums), the concentrations in the exhaust shaft from the alcove drums would be a factor of at least three to nine orders of magnitude below the levels of regulatory concern. The actual concentrations would be even lower than this once the alcoves are sealed at the start of the experiments.¹⁴

The agency recognizes that the actual bin gas generation rate may be higher or lower than 5 moles per drum per year. However, the Agency agrees with DOE that this figure likely overestimates the average gas generation rate from wastes representative of the entire range of TRU wastes. Therefore, the Agency believes that the DOE has demonstrated, to a reasonable degree of certainty, that during the test phase hazardous constituents will not migrate beyond the land disposal unit above health-based levels.

¹⁴ The Agency notes that for the carbon composite filter volatile organic compound diffusion experiments, QA/QC data on accuracy and precision for the sampling and analysis procedures were not submitted with DOE's petition. However, the diffusion coefficient was determined for three different filters for most experimental conditions. Comparison of the diffusion coefficients between filters generally indicate consistent results, although the comparisons are not favorable in every case.

K. Monitoring

As described in the previous section, the Agency believes that DOE has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the WIPP disposal unit above health-based levels during the test phase. Nevertheless, regulations at 40 CFR 268.6(c) require that monitoring of all environmental media be conducted to confirm that no migration of hazardous constituents beyond the unit boundary occurs, unless the Agency determines that monitoring of one or more media are unnecessary or infeasible.

In evaluating the possible pathways for migration of hazardous constituents, the Agency has concluded that hazardous constituents will not migrate to ground water or surface water during the test phase. Therefore, the Agency does not believe that ground water or surface water monitoring is necessary. In reaching its conclusion, the Agency notes that all waste emplaced at the WIPP during the test phase will be contained within steel drums or standard waste boxes which serve as the primary containment barrier. The waste itself is in an immobile form. Although the salt bed formation in which the repository is located contains small amounts of trapped brine, the permeability of the salt formation is exceedingly low, creating a natural barrier to transport. Furthermore, full retrievability of the waste will be maintained during the test phase; retrieval will be accomplished by means of the removal of the waste containers and any salt which has become contaminated. (See section IV.D in today's notice for a discussion of retrievability.) Upon completion of the test phase, the Agency will reconsider whether ground water or surface water monitoring will be necessary before waste disposal operations are initiated.

The Agency believes that the only credible pathway for transport beyond the unit boundary during the test phase is through the underground exhaust shaft. The exhaust shaft is the discharge

point for all ventilation air from the underground facility. Because the waste containers and experimental bins are vented to prevent the buildup of gases generated by the wastes, some gases and vapors will be released into the underground environment. It should be noted that all waste containers are vented through high efficiency particulate filters that prevent the release of any airborne particulate material during routine waste handling operations. In the event that one or more waste containers are accidentally breached causing radiation to be detected by the WIPP radiation monitoring system, all underground ventilation air will be automatically routed through high capacity HEPA filter assemblies. Therefore, any particulate matter contaminated with RCRA hazardous constituents, e.g., EP metals, will be prevented from being released from the exhaust shaft. Thus, only those constituents that are in the gas phase, e.g., organic solvent vapors, could be released to the environment during the test phase.

The Agency considered the potential for fire and explosion hazard in evaluating the potential for release of hazardous constituents as part of its review of the no-migration petition. The Agency notes that the WIPP-WAC prohibits explosives and compressed gases in TRU waste and requires that pyrophoric materials be rendered safe by mixing with chemically stable materials, such as concrete or glass, or be processed to render them nonhazardous. In addition, the Nuclear Regulatory Commission requires that all waste containers be equipped with one or more carbon composite filters designed to prevent pressure buildup or the accumulation of flammable gases prior to shipment to the WIPP, as described in the TRUPACT-II Methods for Payload Control. The performance of these filters has been specifically tested with respect to hydrogen gas diffusivity. The Agency believes that these requirements, in conjunction with the maintenance of general ventilation in

the underground repository, make the possibility of fire or explosion extremely unlikely. The Agency notes that, while DOE is planning to monitor the repository for explosive or flammable gases, monitoring is limited to three fixed locations within the repository. The Agency, therefore, is soliciting comment on whether routine monitoring should be conducted with portable explosimeters to detect any localized buildup of methane, hydrogen, or other flammable gases underground.

In accordance with the requirements of 40 CFR 268.6(c), the petition includes an air monitoring plan which describes DOE's plan to monitor for the presence of organic solvent vapors and other volatile organic compounds at the unit boundary during the test phase. The monitoring plan involves localized monitoring of gases released during the course of experimental activities with TRU mixed wastes, confirmatory monitoring at the underground repository exhaust shaft, and background monitoring at the main air intake shaft. The Agency is proposing to require that DOE implement the air monitoring plan submitted with the petition, subject to the clarifications and modifications discussed below.

The Agency is proposing to require that the monitoring in the exhaust shaft begin 30 days prior to the emplacement of any experimental wastes underground. Monitoring of the bin-scale experiment rooms under today's proposal would have to commence prior to emplacement of any bins containing TRU wastes in the rooms. Monitoring of the alcoves would have to commence prior to the initiation of experiments in the alcoves, after the alcoves are sealed and prior to any purging of the alcove atmosphere. The Agency does not believe that monitoring of the alcoves should be required to begin with emplacement of the first drum of waste. The DOE has demonstrated that migration above health-based levels will not occur if as many as 85,000 waste drums are emplaced in the repository prior to sealing the rooms. By comparison, only 3,850 drums of experimental waste are to be emplaced in the alcoves. Given the small number of drums and given that monitoring will be conducted in the exhaust shaft during the emplacement of waste drums in the alcoves, the Agency has concluded that monitoring of the alcoves may begin when the alcove experiments are initiated.

1. Location and Frequency

The monitoring plan provides for air monitoring at the following underground locations: (1) The gas discharge system

for each of two rooms containing the experimental bins; (2) the ventilation air intake and outlet passageways serving the two rooms containing the bins; (3) the atmospheres within the five alcoves containing wastes; (4) the exhaust shaft; and (5) the main air intake shaft. (See the Background Document for a diagram that indicates the specific monitoring points.) Flow rates will be monitored at the downstream end of the gas discharge system for the bins and at the exhaust shaft. The Agency is also proposing to require that the leakage rate of the sealed alcoves be measured by means of the injection of tracer gases into the atmosphere within each alcove and monitoring of the tracer gas levels. The Agency believes this is necessary to ensure the validity of the data collected from the alcoves. As provided for in the monitoring plan, air concentrations in the exhaust shaft will be calculated from the analytical results from the bin and alcove samples and the measured air flow and alcove leakage rates. Monitoring of the exhaust shaft and the main air intake shaft will provide additional measurements for comparison with the calculated concentrations.

To obtain representative samples, DOE will collect integrated 24-hour samples at all locations with the exception of the alcoves, where the gas composition is expected to remain relatively stable over time. Grab samples are judged to be sufficient for monitoring the alcoves.

Initially, samples will be collected daily at all locations except for the exhaust shaft and the main air intake shaft. After 30 days of daily sampling at a monitoring location, the frequency of sampling at that location may be reduced from daily to weekly if the monitoring results are relatively constant over time, as indicated by a relative standard deviation (RSD) of not more than 25 percent over the last 30-day period for any targeted constituent. DOE requested in its petition that the monitoring frequency be allowed to be reduced further, from weekly to monthly, if after 12 weeks the RSD of any targeted constituent was not more than 25 percent. The Agency is concerned that monitoring on a monthly schedule may not adequately detect or characterize changes in air releases that may occur with the inclusion of new waste forms in experimental bins and alcoves as the testing program progresses. Therefore, the Agency is proposing that, at a minimum, samples be collected weekly. The Agency is also proposing that the exhaust shaft and air intake locations be monitored weekly

for the same reasons. However, the Agency is soliciting comment on whether to allow a further reduction in monitoring frequency. In addressing this point, commenters should specify a sampling frequency and the rationale for selecting a particular frequency.

EPA believes, however, that in no event should the monitoring frequency for the bin discharge system be reduced to less than 20 percent of the minimum time required for the consumption of the total working capacity of the carbon adsorption system. The Agency believes this requirement is necessary to ensure that, should the total working capacity of the carbon bed be exceeded prematurely and breakthrough occur, the event will be detected in sufficient time to take corrective action and replace the carbon charge.

In the event that weekly monitoring results exhibit increased variability, the Agency believes that daily sampling should be reinstituted. Therefore, the Agency is proposing to require that daily sampling be resumed if the calculated RSD for the preceding 4-week period at a monitoring location exceeds 75 percent for any targeted constituent. Daily sampling would have to continue until such time as the criteria for a reduction in frequency to weekly sampling are met again.

2. Hazardous Constituents

Air monitoring will be conducted for the organic solvents most commonly present in the wastes destined for the WIPP facility. The constituents specifically targeted for routine quantitation in the monitoring plan are carbon tetrachloride, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, and 1,1,2-trichloro-1,2,2-trifluoroethane. In addition to these five compounds, the presence of other volatile organics will be investigated and evaluated for possible inclusion in the monitoring program. Specifically, the Agency is proposing to require that any volatile organic compound be targeted for routine quantitation if the average estimated concentration at the point of sampling is 1 ppm or more during any 4-month period and the compound is detected in at least 10 percent of the samples collected from the gas discharge system from either room containing bins or 50 percent of the samples collected from any alcove. The Agency believes that identification and semiquantitative analysis of other compounds is reasonable and necessary as a precautionary requirement, given the limited waste sampling and analysis data available at DOE's waste-

generating sites and the limitations on those data.

To carry out this requirement most effectively, EPA is proposing to require that DOE implement standard operating procedures that will provide positive identification of the following compounds: Perchloroethylene; chloroform; bromoform; dichloroethane; dichloroethylene; toluene; and chlorobenzene. These hazardous constituents have been identified by DOE as being present in TRU mixed wastes at low concentrations and can be determined quantitatively with the TO-14 method. Therefore, the Agency believes these constituents are good candidates for inclusion in the monitoring program as targeted constituents if detected in significant amounts.¹⁵

As a criterion for inclusion of a constituent as one targeted for routine quantitation, the Agency is proposing to allow a higher frequency of detection for the alcoves than for the bins because once an alcove is filled with experimental wastes and sealed and the experiment begins, the composition of the alcove gases is expected to change only slowly. In contrast, because each bin represents a separate experiment, a highly heterogeneous and time-varying composition of gases is expected in the bin discharge system.

Although the Agency believes that monitoring for the five target constituents listed above in conjunction with specific criteria for inclusion of additional constituents is sufficient, the Agency is soliciting comment on whether other constituents should be targeted for routine quantitation.

3. Sampling and Analysis

The monitoring plan provides for sampling and analysis to be performed using EPA Compendium Method TO-14. The Agency believes the method is well suited for routine monitoring of the more toxic and most prevalent organic solvents found in TRU mixed wastes. The method is capable of detecting the hazardous constituents targeted for quantitation with a sensitivity below 1 part per billion. Samples will be collected in pressurized six liter SUMMA[®] passivated stainless steel canisters. Sample storage stability has been demonstrated for a variety of volatile organic compounds with this type of container. Individual canisters

are required to be certified clean and free of leaks prior to each usage. The method requires that all samplers, including pumps and valves, also be certified to ensure cleanliness and reliable sample recovery.

Samples will be analyzed by high-resolution gas chromatography, followed by full scanning mass spectrometry (GC/MS/SCAN) to provide the capability to identify a wide variety of volatile organic compounds. Cryogenic focusing can be used to concentrate samples as needed to meet analytical detection limits. The GC/MS analytical system is required to be certified clean with humidified zero air prior to sample analysis. Consistent with "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" Method 8240 "Gas Chromatography/Mass Spectrometry for Volatile Organics" (EPA Publication SW-846, Third Edition), the Agency is proposing to require that an average response factor for each target analyte, as determined by a five-point instrument calibration, be used for quantitation. (Target analytes are the five constituents initially targeted plus any other constituents subsequently targeted for routine quantitation based on the criteria described previously.) In addition, the initial calibration and any subsequent recalibrations would be required to satisfy the criterion that any single response factor differ by no more than 25 percent from the average of the five. However, if it can be demonstrated that the instrument response is nonlinear, the initial calibration and any subsequent recalibrations would have to satisfy the criterion that any single response factor differ by no more than 25 percent from the expected value derived from regression analysis. For the purpose of investigating the presence of other volatile organic compounds, EPA proposes that a forward search of the National Bureau of Standards library of mass spectra be performed on each sample analyzed.

4. Quality Assurance and Quality Control

The Agency is proposing to require that standard operating procedures be adopted to ensure the validity of the monitoring data. These would cover a range of activities, including sampling and analysis certification procedures, instrument calibration checks, duplicate sampling, audit cylinder sampling, technical systems audits, and data quality audits.

All flow measurement instrumentation used in the calculation of exhaust shaft concentrations would have to be calibrated in accordance with EPA Reference Method 2 "Determination of

Stack Velocity and Volumetric Flow Rate (Type S Pitot Tube)," Method 2A "Direct Measurements of Gas Volume Through Pipes and Small Ducts" (40 CFR part 60 appendix A), or an equivalent method approved by EPA. EPA is also proposing to require that the calibrations be performed quarterly due to the possible effect of salt aerosols in the repository environment on flow measurement instrumentation.

To ensure sample integrity, Method TO-14 requires that all sample canisters be cleaned, pressure tested, and certified with humidified zero air initially and following each sampling event prior to reuse. Method TO-14 also requires that all samplers (which includes pumps, valves, and peripheral equipment used for sampling) be removed from service for routine maintenance and be leak tested and certified with humidified zero air and humidified gas calibration standards. The monitoring plan submitted by DOE indicates that all samplers will be certified on a quarterly schedule.

Method TO-14 requires that GC/MS tuning be performed daily with 4-bromofluorobenzene to verify proper analytical system functioning, that instrument calibration be checked daily with a one point midrange humidified calibration gas standard for each targeted analyte, and that the GC/MS analytical system be certified clean with humidified zero air daily prior to sample analysis. Consistent with SW-846 Method 8240, the Agency is proposing to require that the instrument be recalibrated by a full five point calibration if the response factor from the calibration check differs by greater than 25 percent of the average or expected response factor. All gas calibration standards must be traceable to a National Bureau of Standards standard reference material or an EPA-approved certified reference material.

To ensure that constituents are capable of being detected with the necessary degree of sensitivity, the Agency is proposing to require that the method limit of quantitation be established for each target analyte prior to the initiation of the monitoring program and that it be reevaluated annually thereafter in accordance with the specifications in "Report on Minimum Criteria to Assure Data Quality" (EPA/530-SW-90-021, December 12, 1989). The Agency is further proposing to require that the method limit of quantitation be determined separately for the bin, alcove, and exhaust shaft monitoring locations due to the possible occurrence of differential matrix effects associated

¹⁵ The Agency notes that most other volatile organic constituents found in TRU mixed wastes are listed as hazardous in 40 CFR part 261 because of their exhibiting the characteristic of ignitability rather than their being toxic. Such constituents are generally only hazardous when present at high concentrations.

with the presence of salt aerosols in the repository environment.

In addition to the implementation of canister and sampler certification and analytical calibration procedures, routine quality control procedures must be implemented to evaluate data accuracy, precision, and completeness. In order to evaluate the accuracy of the monitoring data, the Agency is proposing to require that recovery samples be collected from audit cylinders and analyzed at a frequency of 10 percent at each monitoring location. In order to evaluate the precision of the monitoring data, the Agency is also proposing to require that duplicate samples be collected and analyzed at a frequency of 10 percent at each monitoring location, including the exhaust shaft. In addition, the Agency is proposing to require that data completeness be evaluated by data validation audits at a frequency of not less than 5 percent. The Agency believes that data validation is an essential part of the monitoring program and that the proposed audit frequency represents an adequate but not burdensome level of quality control. To ensure that any sampling and analysis problems which may occur are detected and corrected, accuracy, precision, and completeness would have to be tracked and evaluated after every 10 quality control analyses.

DOE's monitoring plan indicates that a systems audit will be conducted at the start of the monitoring program. The Agency is proposing to require that systems audits be performed not only prior to the initiation of the monitoring program but also semi-annually thereafter to be consistent with good operating practice. In addition, corrective action must be taken whenever a condition or practice is found which is outside system specifications or standard operating procedures, or which could reasonably be expected to compromise the ability of the monitoring program to meet established quality assurance objectives for data acceptability.

The Agency is also proposing to establish specific quality assurance objectives for data acceptability for the WIPP air monitoring program consistent with method capability and good operating practice. DOE has raised concerns regarding the establishment of specific quality assurance objectives due to the presence of salt aerosols in the underground repository environment. EPA believes that regular maintenance of sampling equipment will adequately address sampling and analysis difficulties imposed by the repository environment. The Agency

believes the following quality assurance objectives are achievable: plus or minus 10 percent for relative accuracy as indicated by the relative difference between the measured concentration recovered from a sampler and the known concentration of the targeted analyte in the audit gas cylinder; 15 percent for precision as indicated by the relative difference between field duplicate samples; 90 percent for data completeness as adjusted statistically to account for the results of data validation audits; and 0.5 part per billion by volume for method limit of quantitation or one fifth of any established health-based level for a targeted constituent, whichever is greater. The Agency is therefore proposing to require these as quality assurance objectives for data acceptability and to require that corrective action be taken whenever these objectives are not being met.¹⁶

5. Reporting

If during the course of the monitoring program migration above health-based levels of any hazardous constituent is detected, DOE is required under 40 CFR 268.6(f)(2) to notify the Administrator in writing within 10 days. To determine whether migration has occurred (i.e., any of the targeted constituents exceed health-based levels at the unit boundary), the Agency is proposing that concentrations be averaged over an annual time period. This is consistent with the approach the Agency is taking in providing guidance to other parties submitting no-migration petitions to the Agency. The Agency believes that concentrations should be averaged over an annual time period because the health-based levels are derived by assuming chronic or lifetime exposures. The Agency is further proposing that the incremental contribution from the land disposal unit, over and above measured background levels at the site, be used in making the determination. The Agency does not believe that background levels should be a reason for the Agency to

¹⁶ DOE has recently submitted data from an experimental study designed to address the question of what quality assurance objectives can be achieved in the underground repository environment (see Research Triangle Institute, Analysis of Very Volatile Organic Compounds in Canisters from the Waste Isolation Pilot Plant, March 20, 1990). Because the experimental data were submitted very recently, the Agency has not had the time to evaluate it. However, EPA will evaluate these data in comparison to the proposed quality assurance objectives in today's notice. The Agency solicits public comment on DOE's experimental study results, and on what specific quality assurance objectives EPA should require DOE to meet.

deny or revoke the variance proposed in today's notice.¹⁷

In order that the Agency be notified at the earliest possible time of any likelihood that migration is occurring, the Agency is proposing to require that DOE notify the Administrator in writing within 10 days if during any three-month period the average concentration of any hazardous constituent measured or calculated in the exhaust shaft over and above background levels exceeds a health-based level established by the Agency. In addition, the Agency is proposing to require the submittal of annual data summaries and summaries of data accuracy, precision, and completeness at each monitoring location, together with calculated concentrations at the exhaust shaft and documentation of the actual method limit of detection achieved for each targeted analyte. These data would have to be submitted to the Chief, Technical Assessment Branch, Characterization and Assessment Division, Office of Solid Waste, U.S. Environmental Protection Agency. In addition, documentation on all aspects of quality assurance and quality control as described in "Report on Minimum Criteria to Assure Data Quality" (EPA/530-SW-90-021, December 12, 1989) must be maintained in the WIPP facility operating record and be available for inspection by the Agency.

L. Performance Assessment

A primary objective of the test phase is to demonstrate compliance with the applicable standards that would govern long-term disposal of TRU wastes in the WIPP. These standards will include 40 CFR part 191 for disposal of the radioactive wastes and 40 CFR 268.6 to demonstrate no migration of the chemical hazardous constituents of the TRU mixed waste. The process through which DOE will investigate compliance with these standards is called performance assessment. This will consist of an analysis of all aspects of repository performance under all conditions of interest as well as experiments to collect data and verify models used in the analyses. The analytical and experimental processes will be coordinated to arrive at predictions of repository performance.

During the test phase, DOE has an extensive and varied series of experiments planned. For example, the test plan contains 66 different categories of supporting activities for the

¹⁷ As described previously, DOE plans to perform monitoring of background levels in the main air intake shaft.

performance assessment, of which 30 involve in-situ experiments of different types. These experiments will include measurements to better define the characteristics of the surrounding geology, as well as studies of the performance of each component of the repository system (e.g., seals, backfill, etc.). Most of these activities involve experiments that do not use radioactive wastes.

One of the major areas of uncertainty to be addressed during the test phase, however, is the amount of gas that may be generated from the waste proposed for disposal at the WIPP. Gas will primarily be generated by corrosion of the waste containers, microbial decomposition of the waste and radiolysis of the waste. Gas generation is important because the amount of gas generated could affect the way in which the repository reconsolidates over time, and the amount of brine that may flow into the repository. Too much gas generation could even lead to extra fracturing in the surrounding geologic media and could create pathways for waste migration.

DOE plans to conduct several types of gas-generation experiments in the underground repository. One series of tests would use instrumented metal bins containing specially-prepared transuranic wastes and various combinations of backfill, brine, and gas getter materials. These bin-scale experiments are to be conducted in three phases. Phase 1 will involve approximately 48 waste-filled bins of different waste compositions and backfills. Phase 2 will incorporate another 68 bins with more moisture conditions, gas-getter materials and supercompacted high-organic and low-organic wastes. The details of Phase 3 of the bin-scale tests will be defined later. DOE, however, anticipates that these tests will be based on new developments, the results of Phases 1 and 2, and future data needs.

In addition to underground bin-scale tests, the DOE test plan proposes underground alcove tests with TRU wastes. A test alcove is a room mined in the salt with one blind end and one open end sealed with a leak-tight closure plug. Each of the six planned alcoves is approximately 100 feet long, 25 feet wide, and 13 feet high. A total of 3,850 drums of TRU wastes will be emplaced in five of the six alcoves; one alcove will be left empty to provide gas reference baseline data. These tests will continue until the data acquired are sufficient to provide confidence in the reliability of the information being obtained.

DOE will also study modifications to the backfill material, repository design,

and the wastes that may reduce the gas generation problem. Types of modifications to be considered will include waste compaction, waste processing (e.g., incineration or immobilization), modifying the storage room or panel configuration, and other changes in the WIPP design, such as modified seals. DOE has established an Engineered Alternatives Task Force to evaluate such potential modifications. Whenever feasible, modifications that appear beneficial will be included in the test program so that their effects on gas generation and repository performance can be measured. (Some of these modifications will not have a direct bearing on gas generation, but will affect other aspects of repository performance, such as brine inflow, that may affect potential releases of waste from the repository).

At the end of the test phase, DOE expects to be in a position to predict the amounts of gas generated by different combinations of waste forms, container materials, and repository design steps such as gas getters, backfill modifications, etc. The effects of gas generation on long-term repository performance will then be predicted by analytical models, with validation of certain aspects of these models by in-situ testing. The net result of all of these activities will be recommendations about the appropriate waste forms and repository design to use for the WIPP, or even whether the WIPP is appropriate to use for permanent disposal of transuranic wastes. These recommendations will be based in part upon comparisons with the various EPA standards for radioactive and hazardous wastes.

The Agency believes that gas generation and its effects are significant questions that need to be better understood before a decision can be made as to the use of WIPP as a permanent repository. The Agency believes that DOE has laid out a reasonable approach for defining the amount of gas that should be generated by different combinations of waste and engineering controls. Perhaps the most difficult part of the problem is predicting the effects of different levels of gas generation on long-term repository performance. In its comments on DOE's test plan, the Agency has requested that DOE publish, as soon as possible, a summary of its models, describing the effects of gas generation, and more information about its plans to validate these models. DOE has agreed to develop a summary of the current status of its performance assessment, scheduled for June 1990.

In addition, DOE plans to develop annual "consequence analysis reports" throughout the test program to document the project's progress, and it has agreed to give periodic briefings on the project to EPA, the National Academy of Sciences WIPP Panel, the State of New Mexico, and the Environmental Evaluation Group (EEG) (an organization established by act of Congress to provide an independent technical evaluation of the WIPP). To ensure that EPA is adequately informed of the progress of the test phase, EPA is proposing to require that DOE provide annual reports describing tests conducted to date (including results), modifications to the test plan, and a summary of DOE's understanding of the repository performance.

V. Conditions of Proposed Variance

As a condition of granting this proposed variance from the land disposal restriction requirements, EPA is proposing that the following conditions be met by DOE:

(1) No wastes subject to this variance may be placed in the WIPP repository for purposes other than testing or experimentation to determine the long-term viability of the WIPP. In accordance with 40 CFR 268.6(e), EPA must be notified before DOE conducts any testing or experimentation not within the scope of the "Draft Final Plan For the Waste Isolation Pilot Plant Test Phase: Performance Assessment" (December 1989, DOE WIPP 89-011). Placement of waste for the primary purpose of conducting an operations demonstration is prohibited under this variance.

(2) All wastes placed in the WIPP under this variance must be removed if DOE's Performance Assessment cannot demonstrate compliance with the standards of 40 CFR 268.6 with respect to permanent disposal of mixed waste in the repository. Hazardous wastes removed from the WIPP must be handled in accordance with RCRA subtitle C requirements. (A condition of 40 CFR 268.6(a)(5) is in compliance with other applicable Federal, State and local laws. Therefore, removal will also be required under this variance if DOE cannot comply with 40 CFR part 191 standards for the disposal of radioactive materials.)

(3) All wastes placed in the WIPP under this variance must be placed in a readily retrievable manner, as described in section IV.D of this notice.

(4) DOE must provide to the EPA Office of Solid Waste annual written reports on the status of DOE's performance assessment during the test

phase. These reports must include: a description of the tests to date and their results, modifications to the test plan, a summary of DOE's current understanding of the repository's performance, and an annual summary of air monitoring data required in item 6 below.

(5) DOE must install and operate a carbon adsorption control device designed to achieve a control efficiency of 95 percent in the discharge system of the bin experiment rooms. DOE must monitor the control device outlet airstream in accordance with the monitoring plan described in section IV.K of today's notice, and it must maintain design and operating records as described in section IV.J.

(6) DOE must implement the air monitoring plan described in section IV.K.

(7) Before placing waste in the repository, DOE must certify to EPA that it has secured control of the entire surface and subsurface estate at the WIPP site.

(8) DOE must provide to EPA the results of detailed waste characterization and analyses performed on the waste to be emplaced in the WIPP during the test phase.

Beyond these specific conditions, the wastes placed by DOE in the WIPP and DOE's activities under this variance must be consistent with those described in the petition. Under § 268.6(e), DOE must notify EPA of "any changes in conditions at the unit and/or environment that significantly depart from the conditions described in the variance and affect the potential for migration of hazardous constituents from the unit * * *." If the change is planned, EPA must be notified in writing

30 days in advance of the change; if it is unplanned, EPA must be notified within ten days.

Under § 268.6(f), if DOE determines that there has been migration of hazardous constituents from the repository in violation of part 268, it must suspend receipt of restricted wastes at the unit and notify EPA within ten days of the determination. Within 60 days, EPA is required to determine whether DOE can continue to receive prohibited waste in the unit and whether the variance should be revoked.

Finally, under § 268.6(h), the term of today's proposed variance would run for ten years from the date of approval.

Dated: April 2, 1990.

Don R. Clay,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 90-8092 Filed 4-5-90; 8:45 am]

BILLING CODE 6560-50-M

Registered

**Friday
April 6, 1990**

Part VIII

The President

**Executive Order 12709—Increasing the
Membership of the President's Council
on Physical Fitness and Sports**

**Executive Order 12710—Termination of
Emergency With Respect to Panama**

Robert L. Shapiro

Part VIII

The President

Executive Order 12709—Increasing the
Membership of the President's Council
on Physical Fitness and Sports

Executive Order 12710—Termination of
Emergency With Respect to Panama

Federal Register
Vol. 55, No. 67
Friday, April 6, 1990

Presidential Documents

Title 3—

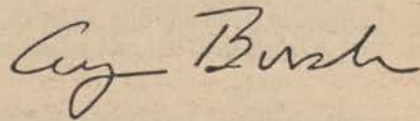
Executive Order 12709 of April 4, 1990

The President

Increasing the Membership of the President's Council on Physical Fitness and Sports

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and in order to increase the membership of the President's Council on Physical Fitness and Sports from 18 to 20 members, it is hereby ordered that section 2(b), line one, of Executive Order No. 12345, as amended, is amended by deleting "eighteen" and inserting "twenty" in lieu thereof.

THE WHITE HOUSE,
April 4, 1990.



[FR Doc. 90-8272
Filed 4-5-90; 1:29 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 11629 of April 4, 1970

The President

Regarding the Membership of the President's Council on Physical Fitness and Sports

By the authority vested in me as President by the Constitution and the laws of the United States of America, I hereby appoint the President's Council on Physical Fitness and Sports to be composed of (1) the President, (2) the Vice President, and (3) such other persons as the President may determine. I further direct that within 30 days of the date of this Order, the Council shall submit to me a list of names of persons whom it recommends for membership in the Council, and I shall appoint such persons to the Council.

Lyndon B. Johnson

THE WHITE HOUSE
April 4, 1970

THE PRESIDENT
THE VICE PRESIDENT
MEMBERS OF THE COUNCIL

Presidential Documents

Executive Order 12710 of April 5, 1990

Termination of Emergency With Respect to Panama

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (hereinafter referred to as "IEEPA"), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (hereinafter referred to as "the NEA"), chapter 12 of title 50 of the United States Code (50 U.S.C. 191 *et seq.*), and section 301 of title 3 of the United States Code,

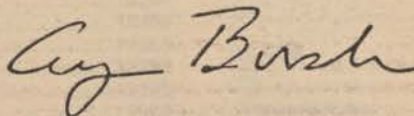
I, GEORGE BUSH, President of the United States of America, find that the restoration of a democratically elected government in Panama has ended the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States previously posed by the policies and actions of Manuel Antonio Noriega in that country, and the need to continue the national emergency declared in Executive Order No. 12635 of April 8, 1988, to deal with that threat.

I hereby revoke Executive Order No. 12635 and terminate the national emergency declared in that order with respect to Panama.

Pursuant to section 202 of the NEA (50 U.S.C. 1622), termination of the national emergency with respect to Panama shall not affect any action taken or proceeding pending not finally concluded or determined as of the effective date of this order, or any action or proceeding based on any act committed prior to the effective date of this order, or any rights or duties that matured or penalties that were incurred prior to the effective date of this order. Pursuant to section 207 (50 U.S.C. 1706) of IEEPA, I hereby determine that the continuation of prohibitions with regard to transactions involving property in which the Government of Panama has an interest is necessary on account of claims involving Panama.

This order shall take effect immediately.

THE WHITE HOUSE,
April 5, 1990.



[FR Doc. 90-8273

Filed 4-5-90; 1:30 pm]

Billing code 3195-01-M

Presidential Documents

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Executive Order 12700 of April 2, 1960

Termination of Emergency With Respect to Panama

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Control Act (Public Law 86-36, 75 Stat. 1408), and the National Emergency Act (Public Law 86-36, 75 Stat. 1408), I hereby terminate the emergency with respect to Panama.

I, LUDWIG B. BUEHL, President of the United States of America, do hereby terminate the emergency with respect to Panama. The emergency was declared by Executive Order No. 12699 of April 2, 1960, pursuant to the National Emergency Act (Public Law 86-36, 75 Stat. 1408) and the International Emergency Economic Control Act (Public Law 86-36, 75 Stat. 1408).

I hereby revoke Executive Order No. 12699 of April 2, 1960, and terminate the emergency with respect to Panama.

It is the policy of the United States of America to maintain the highest standards of living and economic growth for its citizens. It is the policy of the United States of America to maintain the highest standards of living and economic growth for its citizens. It is the policy of the United States of America to maintain the highest standards of living and economic growth for its citizens.

This order shall take effect immediately.



THE WHITE HOUSE

April 2, 1960

THE WHITE HOUSE
WASHINGTON, D.C. 20503

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Friday, April 6, 1990

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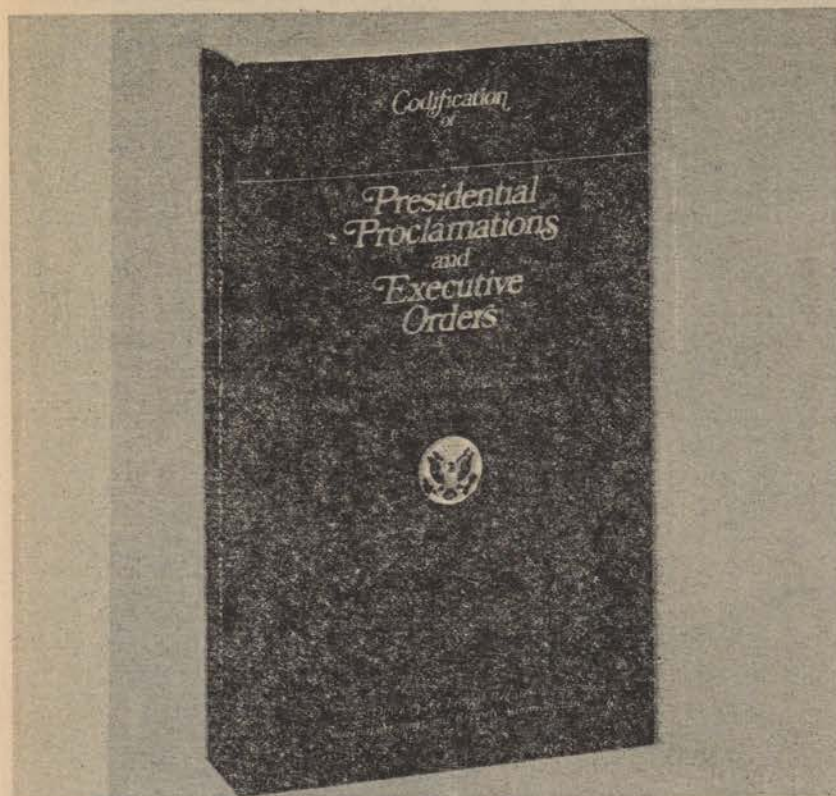
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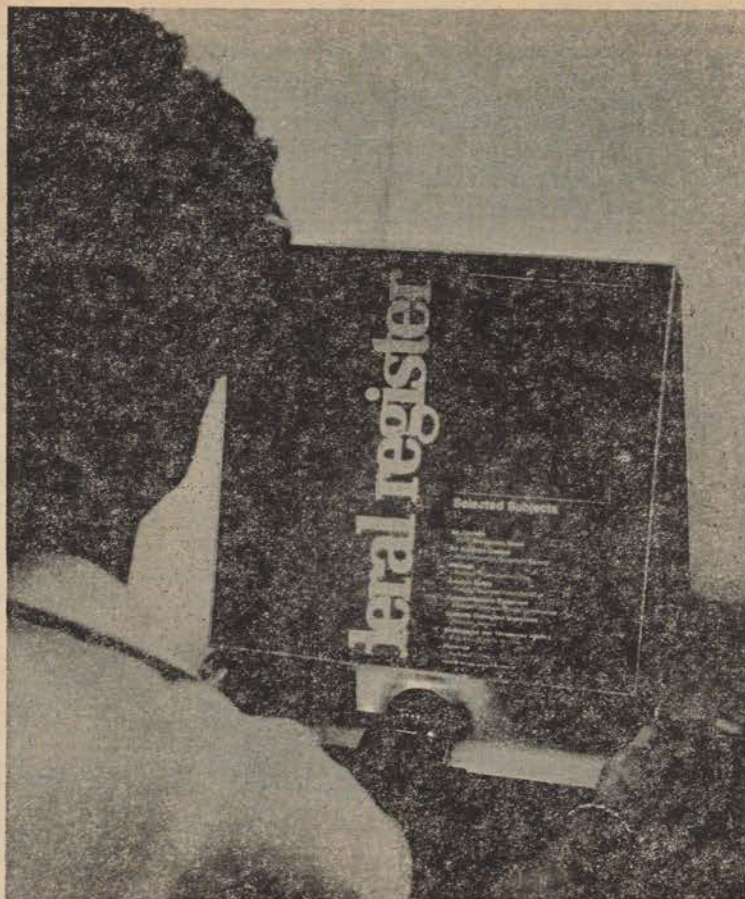
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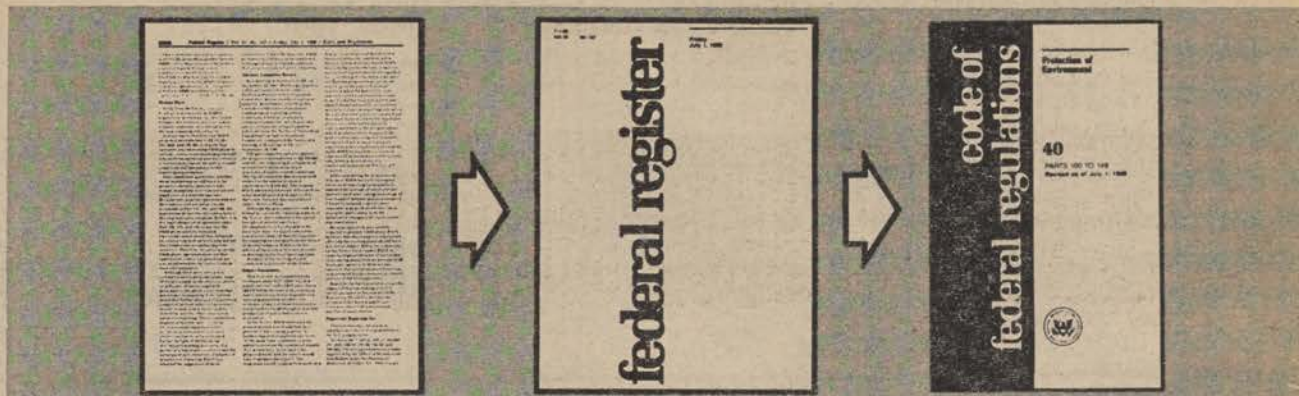
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